

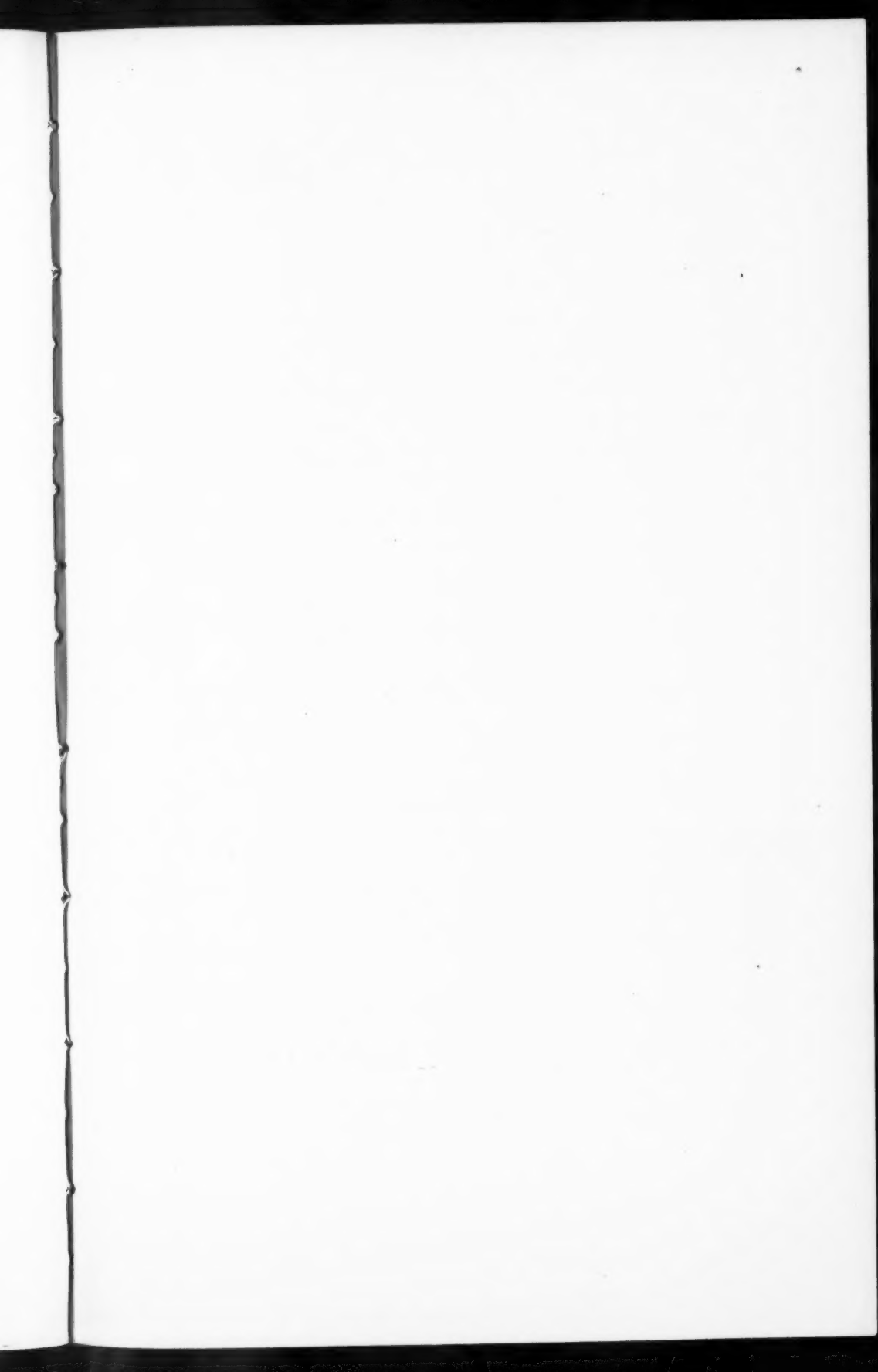
PERIODICAL ROOM
GENERAL DEPT.
UNIVERSITY OF CHICAGO

SOCIAL RESEARCH

An International
Quarterly of
Political and Social
Science

NOVEMBER • 1935

VOLUME TWO • NUMBER FOUR



SOCIAL RESEARCH

The present issue marks the completion of the second volume of SOCIAL RESEARCH. Volume III will contain, among others, the following articles:

- The Soviet Union and the Business Cycle—*Arthur Feiler*
Were Public Works a Failure?—*Gerhard Colm*
Recent Agrarian Policies in Germany, England and the
United States—*Karl Brandt*
Comparative Study on the Trend in Electrical Rates
—*Hans Staudinger*
Federal Reform under German Democracy, 1928-1933
—*Arnold Brecht*
The Meaning of the "Roundabout Ways" of Production
—*Emil Lederer*
The Conception of Profit in the Theory of Accounting
—*Fritz Lehmann*
Overcapacity and Scarcity of Capital in the Business Cycle
—*Alfred Kähler*
Feudal Morality and the Rise of European Capitalism
—*Eduard Heimann*
Militarism and the Idea of Progress—*Hans Speier*
On Neutrality—*Hans Simons*
On Pareto—*Max Ascoli*
Historicism and Sociology in Dilthey's Work—*Albert Salomon*
On Sociology of Religion—*Carl Mayer*
Corporate Publicity—*Rudolf Littauer*
On Better Thinking—*Max Wertheimer*

Subscription \$2 a year
Canadian and foreign \$2.50

66 WEST TWELFTH STREET : NEW YORK, N. Y.

Social Research

AN INTERNATIONAL QUARTERLY
OF POLITICAL AND SOCIAL SCIENCE

VOLUME TWO

• NOVEMBER 1935

• NUMBER FOUR

Tocqueville, Moralism and Sociologist	<i>Albert Salomon</i>	405
Will Germany Devalue?	<i>Arthur Feiler</i>	428
The Problem of Verifying the Theory of Technological Unemployment	<i>Alfred Kühler</i>	439
Some European Aspects of International Law	<i>Hans Simons</i>	461
Case Law and Systematic Law	<i>Rudolf Littauer</i>	481
International Comparison of Educational Expenditures (Note)	<i>Gerhard Colm</i>	503
Recent Literature on Planning (Note)	<i>Carl Landauer</i>	504
Book Reviews		512

Copyright, 1935, and published quarterly by the New School for Social Research, 66 West Twelfth Street, New York, N. Y. All rights reserved. Contributions to SOCIAL RESEARCH may not be reprinted without the permission of the editors. Subscriptions, \$2.00 a year, 50 cents a single copy; Canadian and foreign subscriptions, \$2.50 a year. Entered as second-class matter May 2, 1934, at the post office at New York, New York, under the Act of March 3, 1879.

EDITORIAL BOARD

MAX ASCOLI	EMIL LEDERER
KARL BRANDT	FRITZ LEHMANN
ARNOLD BRECHT	RUDOLF LITTAUER
GERHARD COLM	CARL MAYER
ARTHUR FEILER	ALBERT SALOMON
EDUARD HEIMANN	HANS SIMONS
ALVIN JOHNSON	HANS SPEIER
ALFRED KÄHLER	HANS STAUDINGER
HORACE M. KALLEN	MAX WERTHEIMER
FRIEDA WUNDERLICH	

SOCIAL RESEARCH

is published in February, May, August and November,
by the Graduate Faculty of Political and Social Science
of the New School for Social Research

EDITORIAL AND BUSINESS OFFICE

66 West Twelfth Street, New York, N. Y. Address all
communications to Dr. Hans Speier, Secretary.

SUBSCRIPTION PRICE

\$2.00 a year, 50 cents a single copy
Canadian and foreign, \$2.50 a year

TOCQUEVILLE, MORALIST AND SOCIOLOGIST

BY ALBERT SALOMON

I

IN JANUARY 1935 just a century had passed since the publication of the first part of *Democracy in America*.¹ The extraordinary success of the book, which brought praise and honors to the young writer and prepared the way for his political career, was due to its concentration upon the realities of the times. The theoretical and practical formation of modern democratic and liberal society was the burning problem of his epoch. It is therefore no accident that Thibaudet, in an essay on Tocqueville and Gobineau,² attributes the present lack of interest in Montesquieu and Tocqueville to the breakdown of western liberalism. As a consequence of this breakdown, he asserts, the younger generation is interested only in those new forms of political organization which lie beyond the traditions of Anglo-Saxon and French civilization. These remarks by so earnest and scrupulous a political philosopher as Thibaudet lead us to consider what the significance of the centenary of Tocqueville may be, apart from the established cultural convention. Is it true that his work really is only an expression of his own historical and political situation, and that therefore it has lost its significance for a time beyond the end of that period?

We may question the usual interpretation of Tocqueville as a foremost exponent of liberalism, in view of the fact that his book was praised by conservatives as well as liberals, a point noted by Gentz.³ It appears rather that Tocqueville's thinking does not represent merely the concrete intellectual expression of a definite political tendency of the nineteenth century. Although he sought to

¹ An American translation appeared in 1836 with a preface by M. John Spencer, a member of the New York legislature.

² *Nouvelle Revue Française*, February 1934, pp. 216, 217.

³ *Oeuvres Complètes*, vol. 1, p. vi.

effect a compromise between the divergent political groups of his time, his intellectual endeavor essentially transcends any immediate political purpose.

To designate Tocqueville as a moralist means two different things. First it indicates that it was a purely personal need that drove him, the thinking man, liberated from scientific and academic traditions, to seek an understanding of the social and political situation and his own place in it. Second, it suggests that in following out the consequences of his researches, Tocqueville came inevitably upon the problem of human nature, and his own distinct idea of man became the presupposition and goal of his work, as in the cases of Montaigne, Pascal, Hobbes and Shaftesbury. Because he assumed this philosophical attitude, which the seventeenth and eighteenth centuries dubbed that of moralist, Tocqueville's work breaks through the narrow boundaries of political actuality. It was not only that he felt grief over the political and social decline of the nobility, but much more that he was affected by the problematic situation of the forms of personal perfection in moral, intellectual and spiritual life under the new social order. Hence the changing of the old society of estates into a democratic order and the resulting transformations of man and his social relations became the center of his thinking. As the spiritual hero or great man was the most intense concern of his life, Tocqueville's historical experience led him to perceive the profound connection of the forms of social and personal life with the totality of the social structure. These are the reasons why we designate Tocqueville as moralist and sociologist. In his experience there were the elements, preformed, of a new mode of thought: the historical and sociological consciousness. Historical consciousness means the knowledge of the distinctive character of a constellation of political and social forces, conditioned by the past and directed toward the future. Sociological consciousness means the understanding of the dependence of human existence and its social forms upon social conditions and the knowledge of the functioning of social institutions and of the rules of social activity. All these existential and

intellectual presuppositions of Tocqueville's work indicate that a summary interpretation of it as liberal in the sense of the nineteenth century neglects the philosophical temper of his thinking.

It would not have been surprising if, like Bonald or de Maistre, Tocqueville, as a representative of the politically vanquished nobility, had espoused a traditionalist or counter-revolutionary political theory. On the other hand, he might have followed the example of many men of his class who followed enthusiastically the new political movement. But Tocqueville never became a political partisan, even when he accepted the new social and political order and strove to make the best of it. His intellectual perspicacity and moral sensitiveness lifted him above the plane of the political thinkers of his epoch. He was able to understand the unity of the historical process and the inner continuity of the revolutionary movement, begun in 1789 and not yet finished in 1848. He was one of the first to see that the social revolution was the inner consequence of the political democratic revolution. The same intellectual and moral vision enabled him to understand that the decline of the nobility was an inexorable historical process begun seven hundred years earlier. Tocqueville was himself aware how fruitful the historical perspective of his work was for a fundamental insight. In a note¹ he remarks that the place, we may say the sociological place, for important and significant intellectual and spiritual achievement is neither within the static framework of a corporate society, nor within the dynamic structure of an egalitarian democracy. Both are in their varying ways equally conventional. It is in periods of transition from a firmly fixed social order to a new structure of existence that the conditions are given for many fertile insights. We may add that these are the epochs of crisis, when the spirit must span the crumbling world like an arch and by the highest power of its knowledge arrive at definite insights into the primordial phenomena of social life and the intellectual connection of antagonistic concepts within a higher spiritual unity.

Tocqueville possessed all the personal qualities necessary for en-

¹ *Oeuvres Complètes*, vol. 3, pp. 423, 424.

visaging the crisis of his epoch. He was intellectually and morally so detached that he understood in its logical development the historical process and the final defeat of his class, and therefore he regarded the outcome as providential. Moreover he was so deeply dominated by social morality and the feeling of social justice that he proclaimed the process of economic leveling as a presupposition of the decent existence of the great masses. Nevertheless, in spite of his strong opposition to the nobility as a social class, his family life and personal experience enabled him to perceive that freedom could exist as a form of personal perfection even within the rigid structure and conventions of that order. Quite independently of the political commonplaces of his period, he was aware of liberty as a permanent element in social structure, changing its content with varying historical and social conditions, and remaining correlative to institutional forms and order. His thinking brought him inevitably to a realistic, positivistic and historical interpretation of political institutions, since he felt the need of observing the practical application of political ideas and their functioning under social and historical conditions.¹

His inner experience and his survey of a troubled world constituted his preparation for his experiences in America, as expressed in his *Democracy in America*. When he stepped on American soil, it was with the full consciousness that the world of his fathers was irrevocably gone. He was also clearly convinced that democracy was the destiny of the western world. This he accepted not merely because he realized the inexorableness of historical development. He went farther and asserted that democracy offered the means of developing the potentialities of the new situation and of bringing out the permanent forms of life in the new historical world.

II

This attitude leads Tocqueville to his first basic problem, the nature of democracy. He seeks to answer such questions as the follow-

¹ This point has justly been emphasized by Janet, *Histoire de la science politique*, vol. 2, p. 736.

ing: What does democracy look like? How does it function? What positive forces for the foundation of modern society does it reveal? What dangers does it present in the construction of a social order? The first section of his book, therefore, is a realistic empirical analysis of the political institutions of the United States. But in his interpretation he looks upon American democracy only as an example of the general form of modern social and political structure.¹ From the observation of a specific historical form as found in the constitution of the United States, he had therefore to pass on to general sociological concepts, which comprehend the typical events and movements of modern democracy. Even in the first part of his work Tocqueville goes beyond mere empirical analysis and attempts to derive some general concepts from his realistic observations and the inner logic of democratic principles. A result of the combination of deductive and inductive methods is that the sociological character of his concepts is not always plainly evident.

The second part of his book is far from being an analysis of American democracy, and presents only a few and fairly unimportant American illustrations. In this section of his work it becomes clear how heavily the transformations in the political and social structure of the Western world weighed upon Tocqueville, and how they cast their shadow upon his interpretation of American democracy. Yet this volume reveals Tocqueville at his profoundest. Here he attempts to show the potency of the social structure in fashioning human types; and to demonstrate what transformation in types of thought, forms of emotional response, and moral and intellectual attitudes have been brought about by democratic society, as contrasted with a world of estates and aristocracy. Just as in practical life he accepts the trends toward democracy, so in theory he recognizes the interconnection of all the spheres of hu-

¹ Bryce has pointed out clearly that Tocqueville's analysis was not complete and could not become an exhaustive work because, as a result of his philosophical and French presuppositions, he was unable to see the complex reality of the United States. Cf. Bryce, James, *The Predictions of Hamilton and de Tocqueville* (Baltimore 1887), pp. 23, 24; *Modern Democracies and The American Commonwealth*, *passim*.

man existence. He sees that different social structures aim at different forms of realization. Thus one age will strive for fame and military glory in the social sphere, and for the contemplative life in the intellectual sphere, while another will glorify the civil virtues, human welfare and peace, practical morality, and social sympathy. But whatever the historical transformation of men, the structure of the permanent social functions is always realized even though in varying historical constellations.

Tocqueville entered upon his new approach to reality through history and the sociological consciousness, in response to the obligation imposed upon him by the situation of crisis. His work therefore stands beside the works of Comte, Burke, Marx and Jacob Burkhardt as among the first great attempts at a criticism of western culture on the basis of a new intellectual method, deeply influenced by the political and social situation.

I am aware that this departs from the usual interpretation of Tocqueville. In French literature particularly Tocqueville's name appears exclusively in the histories of political theory and works on public law and historiography. I do not wish to enter upon a discussion of the classification of Tocqueville's work, for clearly he must be treated in political science and history as well as in sociology.¹ I desire only to draw attention to the fact that the concepts in the *Democracy in America* involve many difficulties of interpretation, which root in the discrepancy between the content of ideas and their concrete literary formulation. Tocqueville was of course intimately acquainted with the great French political and social philosophers of the eighteenth century. The influence of Montesquieu, in particular, is evident in Tocqueville's terminology. Nevertheless the inner content of the book and its place within the framework of his complete works, including his correspondence and conversations, afford the means for a proper interpretation of Tocqueville's rational and formal categories. For example, when at the beginning of *Democracy in America* he remarks that he considers the equality of conditions a characteristic mark of the new

¹ Sorokin, P., *Contemporary Sociological Theories*, p. 720.

world he is referring not only to the political equality of all citizens, but rather to the entire social structure of capitalist democratic society. So also he often uses the political concept democracy, when he means the bourgeois social structure of the post-revolutionary world. In other words the methodological difficulty in interpreting the *Democracy in America* consists in the fact that while the outward form of his concepts is political, their content nearly always refers to a sociological structure or relation. Only in his later work did Tocqueville acquire an adequate conceptual form for the content of his ideas.

III

Tocqueville traces out the general laws of the democratic movement. But he is well aware of the special conditions of the historical form of democracy in America. The Pilgrim fathers and the pioneers brought to America the traditions of Anglo-Saxon freedom, a valuable heritage from the traditions of the middle class, deriving from the later middle ages. The struggle of the sects for spiritual liberty created a new sense of liberty and voluntary obedience to the law. Furthermore in addition to these tendencies toward liberty, the equal conditions of the struggle of life, the promise of a virginal world and the common fate of the immigrants created the homogeneity and equality of democracy. Hence it was possible in the United States to consider liberty and equality *a priori*, as organic products of the geographical and political situation and the historical heritage. In Europe, on the other hand, the situation was just the reverse; for there it was absolutism which, before the establishment of democracy, had created by its process of levelling the factual presuppositions for the political stand after the memory of medieval liberty had been lost for centuries. Tocqueville is wholly convinced that because of this difference in origin, democracy in the United States was created by the union of the spirit of religion with the spirit of liberty. His personal problem, and the dominant motive of his political career, was to help the French democracy to realize this union of religious content with the form of liberty.

One must know this spiritual presupposition of Tocqueville before one can understand the significance of his grouping of the conditions for the perpetuation of democracy in three classes or upon three levels. The highest and most important level is constituted by those conditions which shape the intellectual, moral and spiritual content of the nation, and which alone can give character, rhythm and form to political institutions and social life. Therefore for Tocqueville Christian morality, or at least its conventional observance, is indispensable to the genuine democratic form.¹

The second class of conditions necessary for the functioning of democracy Tocqueville sees in the laws, by which he means above all the constitution and the fundamental laws of democracy. He sees the greatest menace to democracy in an antagonism between these two groups of conditions and the decline of vitality of moral forces. The consequence would be that the majority in parliament might establish an arbitrary reign, endangering not only the rights of minorities, but also the national interests. In this connection Tocqueville quotes Jefferson in a letter to Madison: "The executive power in our government is not the only, perhaps not even the principal object of my solicitude. The tyranny of the legislature is really a danger most to be feared and will continue to be so for many years to come. The tyranny of the executive will come in its term, but at a more distant period." Tocqueville sees that the danger of despotism by a majority is countered in the United States by three legislative forms. First the federalistic constitution distributes the law making function between the individual states and the federal government. The United States cannot use physical force against the states, nor are the states able to destroy the fundamental political framework of the federal state. The second legislative device for the protection of democracy is seen by Tocqueville in the democratic constitutions of local and county governments. By virtue of their participation in and responsibility for the gov-

¹ It is especially important to emphasize that Tocqueville, a Roman Catholic, stated as a conviction not only of his own but of the American clergy as well, that only the separation of church and state makes possible the vital functioning of religion through church institutions.

ernment of their immediate communities the citizens are educated in politics and political obligations and in the defence of political liberty. The chapters dealing with the townships in *Democracy in America* are probably the most impressive and beautiful section of the first part. Tocqueville treats of the township with especial affection, because to him this municipal democracy appears to be the root out of which the tree of American democracy grew. Here also he is influenced by French and other European history, for the municipalities of western Europe were the birthplace of everything that was to become political liberty and democracy in the western world. Tocqueville notes another important characteristic of the township constitution: its existence is in itself sufficient to make impossible a bureaucracy administered centrally by either the state or the federal government. Thus Tocqueville sees in the existence of these municipal and regional democracies a twofold protection against the dangers involved in the new political institutions of America. These little democratic communities will not only create a shelter against demagogical majority revolutions, but they will also be able to resist the developments of state or federal government in the direction of a centralized political administration. The third and most important barrier against the pressure of mass democracy Tocqueville finds in the federal judiciary and above all the Supreme Court. He is well aware that the popular election of judges has its dangers, both for justice and for democracy, and for this reason his view of the Supreme Court is all the more impressive. By virtue of its capacity to determine the constitutionality of legislation through interpretation of the spirit of the constitution, the Supreme Court becomes the guardian of the constitution, and thus the most important factor aside from the president. Hence Tocqueville terms the Supreme Court the aristocratic element in the radical democratic order of America. He regards this aristocratic institutional factor as the basis for creating, by means of political and legislative institutions, a balance between the constructive and the destructive forces of democracy, so long as these institutions remain permeated by the moral idealism of the people.

The third class of conditions which Tocqueville regards as essential to democracy in America is the peculiar form of economic labor and its spirit in a country which offers such immense possibilities for work and gain. The equal interest in profit and the ambition for acquisition and its chances create a social homogeneity and a common interest in prosperity, which democracy is likely to guarantee. Tocqueville readily admits that economic tendencies and the spirit engendered by them exert a great influence upon the formation of democracy. But on the other hand he holds fast to a hierarchy of social values which condition life to such a degree that he holds in least esteem the influence of economic tendencies. Tocqueville did not always, however, follow the inner logic of his position that religious and moral forces are powerful enough to shape the world. He realized that it was impossible to found the new idea of political freedom on that of religious freedom; consequently he sought to base it on the idea of the personal interest of the citizens.

IV

The presuppositions and the direction of Tocqueville's thought come to even clearer expression in the second part of *Democracy in America*. Here for the first time in the nineteenth century the attempt is made to show the change in forms of human existence in and through the process of social development. In three great chapters Tocqueville treats of the change in forms of intellectual, emotional and ethical life. It is very significant that in this context he once remarked that he could not imagine anything more barren for the human mind than an abstract idea. Just as Hegel sought the concrete concept, whereby to comprehend the totality of things, so also Tocqueville aimed at comprehending the totality of the social *via* an interpretation of political and social reality.

He achieves new insights into that transformation of the emotions of man which has taken place since the abolition of feudal society:¹ under feudalism personal relationships within a family were determined by social norms, the heir of an estate being con-

¹ *Oeuvres Complètes*, vol. 3, p. 315 ff.

sidered by his relatives as belonging to a higher social stratum, but in modern society the personal relationships among members of a family are shaped by the subjective power of sentiment. With equal clearness Tocqueville recognizes how the problem of form in poetry is changed by the new psychological interests, and how the close attention to the study of individual souls is a result of the change in the social structure. He declares—a contention which the sociological analysis of literature has since proved—that the pure tale and story is supplanted by the psychological novel, which becomes the typical literary form of the new society. Similarly¹ Tocqueville notices certain striking changes in the realm of intellectual life. Thus he believes that the interest in general and abstract concepts in the political and moral sciences and also in history may be regarded as a result of modern democracy, in which not individuality and personal effort but general social movements are the forces determining the course of history.² Equally astonishing is the following insight which is in the general direction of the thinking of Hegel and Comte, although there is no trace of direct influence. Tocqueville contends that in times of a static and feudal structure of society religious thinking runs parallel to the forms of social life, and the absolute is thought of as transcendent, as a supreme creative God and director of the world, but that with the rise of modern democratic mass movements a new metaphysical tendency begins, which tends to set this absolute into the process of history itself.³ Thus Tocqueville binds a philosophy of immanence into the sociological structure. The second part of *Democracy in America* moves in the direction of a sociology of culture.

V

Among the aphorisms found in Tocqueville's literary remains there is a remark that every political form contains within the inner logic of its principle the tendency toward its own destruction.⁴ We

¹ *Ibid.*, p. 124 ff.

² *Ibid.*, p. 140 ff.

³ *Ibid.*, p. 49 ff.

⁴ *Oeuvres Complètes*, vol. 8, p. 485.

do not know when Tocqueville formulated this idea. It may perhaps have originated while he was writing his *Democracy in America*. For here, by observing the functioning of democratic institutions and by elucidating their possible consequences he indicates the way whereby democracy could lead to a new form of undemocratic domination. He sees that this new political form cannot be included under any of the earlier concepts of absolutism and despotism, since it would develop out of the conditions of modern life. The absolutism of the seventeenth and eighteenth centuries had created the absolute power of the crown, at least in theory. But the technical imperfections of the state administration and the customs and practices of a society organized in estates acted as limitations upon the claim to absolute sovereignty. With the destruction of local and corporate administration and judicial power, democracy started upon a course that made possible not only the centralization of political power, but also a rationally unified and systematized administration. In politics the general tendency of rational order is toward the creation of a centralized administrative apparatus which, particularly when in the hands of a democratic government, is capable of ordering, directing and fashioning extensive sections of social life. The sociological significance of this tendency is seen in a rational domination of society by the state, and a new corporate order. In place of the old hereditary aristocracy a new bureaucratic aristocracy arises. The inner bond to the state will be either the fear of its unlimited power or the ambition to become a member of this aristocracy of functionaries.¹ To this tendency toward rational organization and the leveling process of political administration there corresponds a growing feeling of privacy and individualism on the part of the citizen. For Tocqueville individualism signifies nothing but subjective egoism. It throws man back to the narrowest interests of his private existence and destroys all forms of community of spirit. If democracy is not in the position to create artificially local and provincial community forms through communal and provincial self-administration, then

¹ *Oeuvres Complètes*, vol. 3, footnote, p. 499.

the centralizing tendencies of rational organization will find no hindrance to a rule of the majority based on the principle of popular sovereignty; and the way will be open for the development of a new form of absolute, rational social domination.¹

These tendencies naturally are not to be regarded as formal laws of development. They grow out of the particular character of the individual spheres of life within the general historical and social structure. The development of the political organization of a social structure is thus always closely related to the particular character of all the social and spiritual conditions constituting the historical moment. Just as the state makes its first steps toward rationalization when new potentialities of political rule are rendered available by the combination of a money economy and a new military technique, so will new political forms of democracy be crystallized by the interaction of new rational tendencies in the various spheres of life. It must be kept in mind that while Tocqueville affirmed the inner logic of the development of the different spheres of life and considered their possible tendencies as cognizable, he nevertheless believed that there were limits to our understanding. Thus it was not possible to predict the final decision which a nation might make concerning its destiny. Although no one before Marx had emphasized so strongly as Tocqueville the determination of the intellectual and emotional life by the historical structure of society, yet Tocqueville was most deeply convinced that in decisions which have to do with the total existence, not only individuals but also nations are capable of mastering and breaking through the determining forces of their existence. Consequently nothing final can be said about the future of democracy, even though there are many signs of a new rational and absolute form of government.

VI

Tocqueville saw clearly also the antagonism between the political and economic form of democracy. He noted that the state was in

¹ Lord Hewart in his *The New Despotism* is thus to be regarded as a disciple of Tocqueville.

a position to make all classes of the population dependent on it as a result of the development of financial economy. By state loans and state organization of savings banks the state was able to bring the upper and middle classes into such an immediately interested relationship to itself as to guarantee an effective dependence and participation of the citizen in a definite political form of the state.¹ Ten years before the *Communist Manifesto* Tocqueville recognized the deep opposition between capitalist economy and political democracy and the tendency of the state to regulate economic affairs. Moreover he observed how profoundly the new economic system began to change and reshape the character of mankind. He described the change in general social relationships, such as the relation between master and servant in the capitalist and democratic order. With the dissolution of the old patriarchal ties there also disappeared the personal human bonds of devotion and faithfulness on the one hand and of paternal care and responsibility on the other. Democracy creates a formal principle of equality between master and servant; and the correlate of this in the economic sphere is a purely market relationship.² In agriculture a parallel situation has developed in the transformation of the relationship of manorial lord and tenant to a relationship based simply on economic profit. In agriculture these new political tendencies combine to make the ownership of land more mobile. This is shown above all in the system of leases which are made only for short periods and oriented solely on the possibility of profits. The laws of inheritance also take cognizance of the new economic conditions in that they permit the equal division of real property among all children and thus further the mobilization of land.

Tocqueville sees particularly the antinomy between the general norms of democracy, which formally guarantee to every citizen the right and opportunity of advancement, and the social development of the new industry, especially of large scale industry. He observes that the economic and technical opportunities for large scale in-

¹ *Oeuvres Complètes*, vol. 3, p. 501 ff.

² *Ibid.*, p. 251 ff.

dustries will bring about new agglomerations of capital and create a new industrial aristocracy.¹ This aristocracy, however, will have in common with the old aristocracy only economic power, and in contrast to the latter will be interested only in economic profit. Tocqueville clearly foresees the dangers presented to the social order by such a concentration and collectivization of economic interests, even though he is inclined to underestimate it. On the other hand he sees very clearly that the position of the working class in large scale industries is in insoluble contradiction to the idea of democracy. These workers will constitute the only class or estate—but a negatively privileged one—in this society, which prides itself so much on having abolished the estates. Without savings, without land, the workers are dependent upon the economic situation of the market and upon the wage offers of the entrepreneur. A crisis will bring them unemployment and throw them upon public charity. It is at this point that the state *qua* state will become interested in economic problems and will intervene in the economic order from the viewpoint of social policy. In this way the control and regulation of industry in general becomes one of the most important problems in the tendency toward a new absolutism. In the measure in which the individual branches of industry combine and organize, their social policy, their production policy and their economic power become matters of general concern to the state. Since the state itself goes into industry, particularly in the field of heavy industry, the development of state direction of industry opens the way to a new and very effective form of state absolutism—"Industry lead us, and it in turn will be led by the state."² It is thus not only the antagonism between democracy and bourgeois society which leads to a new transformation of the state. But the powerful economic forces toward concentration and rational organization press on and pass beyond the boundaries of economic privacy to become a problem of general social interest, and so of political importance. In addition to these

¹ *Ibid.*, p. 285 ff.

² *Ibid.*, p. 511.

general economic tendencies Tocqueville sees certain institutional forces which threaten to undermine the democracy of the future.

VII

Tocqueville devoted some penetrating analysis to the relations between a democratic social structure and its army. He observed here an antagonism between democracy and the immanent tendency of an army, which is parallel to the antagonism revealed in capitalist economy. Whereas modern society loves peace and desires an unbroken and calculable political policy in the interest of its economic system, the interests of a democratic army are directed toward war. Tocqueville derives this phenomenon from the social composition of the class of officers and non-commissioned officers. In an aristocratic social structure military service is a class privilege, and military rank is independent of the position of the different groups of nobility. In a democracy on the other hand, where the army does not occupy the same social position as in an aristocratic society, the social rank of the officer depends on his position in the service, and his income derived therefrom. Since in peace time advancement is determined only by length of service, there is always an active spirit of unrest among officers which makes them avid for the opportunities for distinction and advancement in rank that come with success in war. The only counterweight to these political interests of the officers is found in the civilian spirit of the soldiers, who receive their military training as part of the system of general military service. Since the latter group is always changing, while the officers' corps remains constant—for this is their life career—the military and warlike spirit of this core of the army remains a permanent source of danger for the foreign policy and peace of a democracy. With astonishingly keen insight Tocqueville foresees that wars will become more rare in coming generations in the measure in which economic and political factors become interconnected in a democracy. But on the other hand if a war comes it will plunge into a common ruin the indissolubly interconnected world of modern

democracies. It is not only the possible unfortunate outcome of such a war which can be so fateful for democracy. Any protracted war can undermine and destroy the constitution of a liberal democracy, and there is not even any need for a military coup by victorious generals. The gradual centralization of all the institutions important for life and the conduct of the war, combined with the regimentation of the entire population, may even under a civil government prove to be a slow transition to a permanent form of modern state slavery. Tocqueville finds analogies for such a course only in the late Roman period. In the measure in which a modern democracy pursues a rational and peaceful foreign policy and in its domestic policy advances toward political and administrative centralization, the restless spirit of the army may make possible a military dictatorship. Such a dictatorship will be quite different from that of a Caesar or Napoleon. For it will find available a widely ramified and thoroughly rationalized administrative system, which is an obedient instrument in the hands of the existing executive power. "I am convinced that in such a case a sort of merging between the attitudes of the clerk and soldier will take place. The administrative system will take on something of the military spirit and the military something of the civilian spirit. The result will be a military government, regular, clear, precise, and absolute. The people will take on the appearance of an army and society of military barracks."¹ Such tendencies need not develop under pressure; they may also be the result of general apathy and lack of interest, which Tocqueville considers the products of a subjective egoism that has deprived men of any sort of communal spirit. The executive power will then without any danger make itself master of the constitution. In the following phase it will be relieved of its power by a dictator and thirty men, who will take possession of the executive state apparatus. Neither the executive nor the dictator can establish anything permanent.²

¹ *Ibid.*, p. 557.

² This early formula of the second part of *Democracy in America* appeared in 1840, but recurs in his memoirs written in 1850-51 in the analysis of Louis Napoléon: "Il ne fondera rien, mais — ça durera."

The very reason for the easy success of the dictatorships makes it impossible to believe that they will continue for a long time in power. They are able to seize power because none resists their attempt, but they will fall also, because no one will sustain them in their power. Thus Tocqueville sees in different aspects of modern life parallel tendencies which are pressing on to a new form of absolute sovereignty. In the rational centralized order of the political and social world, in the technical and economic increase of industrial rationalization certain tendencies are arising which point inevitably to a central, unified and standardized regulation of our entire life. In addition to this there is a tremendous danger of the relaxation of the will to freedom and its substitution by a dull indifference. Tocqueville is emphatic in his warning against this attitude, as this adds subjective elements to the objective tendencies toward despotism. In this connection it is worth repeating Tocqueville's observation that the old expressions of despotism and tyranny are unsuitable for any new form of absolutism emerging out of democracy. This new form of absolutism will differ from all preceding ones in content and structure. It will be the child of modern rationalism, of the leveling process and of antagonisms in the economic world under conditions of opposition between militarism and democracy. For this reason Tocqueville believes that the only possibility for maintaining democracy lies in the citizen's consciousness of responsibility and his deep love of liberty, finding expression in his political rights.

VIII

Tocqueville's idea of freedom leads us to the profoundest part of his thought in which, on the basis of sociological and historical knowledge, he undertakes to venture into the realm of general and permanent forms of human existence. Like Kierkegaard and Feuerbach the ultimate aim of his knowledge is a doctrine of man and a theory of social and political existence. It is not by chance that this was the inner tendency of his thinking. Ever since the Sophists we can observe that a time of social change produces a

particular type of philosophizing. The conditions of human existence and the general forms of life become the central problem of thinking and the concrete concept the most important need in this intellectual situation. Only in this light can we understand how it is possible to find in Tocqueville's empirical analysis judgments concerning the value of social tendencies and relations for human existence. He was fearful of the stunting of mankind through occupational specialization and increased technical organization. He foresaw the dissolution and the dehumanizing technization of the forms of the economic process under a system of rational direction and administration, and the devitalization and degradation of labor to merely a dull mechanical exertion of force. He envisaged the approach of a time when the state will not only assume the responsibility for social welfare, but will also take over the schools and churches, converting them into political institutions and the clergy into state officials. Since the state will intervene in and fashion the innermost character of man, it will limit, stultify and destroy the general character of human life. It was this danger, that in the modern democratic world man will come to exert a more or less mechanical function in an enormous abstract state machine, which determined Tocqueville's idea of freedom. As early as 1836 he wrote to a friend: "I am a liberal of a new kind."¹ In *Democracy in America* he definitely expressed his mistrust of the political liberals, for he was well aware that his doctrine of freedom was not compatible with contemporary political theories. It is almost symbolic of his inner loneliness and forlornness in this world that the gift of his friend John Stuart Mill, the first edition of *On Liberty*, came to him on his deathbed.

Tocqueville knew that every historical and social structure produces its own form and specific concept of freedom. From his own experience he knew the very spiritualized form of aristocratic freedom, through which personal courage, moral responsibility and spiritual definiteness were realized. But this historical form made transparent for him the eternal task of freedom. It is the

¹ *Oeuvres Complètes*, vol. 5, p. 433.

everlasting function of freedom to make possible and guarantee the spiritual, moral and intellectual realization of personal perfection. Freedom therefore stands in the service of the highest and ultimate values. It is that form of life by and through which the historical man breaks through the conditions of his existence and participates in an eternal order. In contrast to the negative concept of freedom of political liberalism, Tocqueville's concept may be designated as one of existential freedom. That is, whereas the political idea of freedom merely sets up a relationship between the state and the individual citizen, Tocqueville undertakes the task of showing in a positive way what is the function and meaning of freedom in the totality of man's social existence, no matter how various its historical forms may be. His gravest concern is that every kind of freedom will be eliminated or destroyed in the modern democracy as a result of the growing omnipotence of the state. If social justice is a social goal of the modern democratic world, the corresponding existential concepts must be personal dignity, responsibility and virtue as forms of the individual realization of the social ideal. Will these ideas, however, be able to assert themselves, find their place and preserve their function in a world which organizes human existence under the rational and inexorable direction of the state? One hundred years before the despairing attitude of Max Weber, Tocqueville raised the identical question which was the basis of Weber's work: How will it be possible in this world to preserve those forms of life in which personal, intellectual and spiritual realization are possible? For Tocqueville the future of democracy is dependent on the balance between these forms of intellectual freedom and the institutions of a social democratic order. Because he is fearful that the weight of order will overbalance that of freedom in the modern world, he clings all the more passionately to his idea of freedom as a permanent form of human realization. His optimism concerning democracy is to be explained only as a pedagogic and didactic attempt. The actual content of all his work is deeply pessimistic as to the future of political and social development.

IX

The analysis of democracy and the investigation of its social principles dominated the thinking of Tocqueville even after the great work on the American democracy. In his most beautiful book, the *Memoirs*, he has given a penetrating sociological description of the political and civil society of the bourgeois monarchy and its parliamentarism. Here we find a profound analysis and characterization of the incapacity of the revolutionists of 1848, and also his ideas on the different socialist systems and their possibilities. It was in this connection that he asked himself whether the idea of private property is really a permanent form of human nature or will be dissolved and destroyed by the new social movements. The speech delivered in parliament in January 1848 prophesying the coming revolution is the most famous of his political career. And the portraits of Louis-Philippe, Louis Napoléon, Cavaignac and the radicals of the French parliament are vivid individual characterizations of different political types.

In studying Machiavelli,¹ he notes that the Florentine democracy of that time was altogether different from every type of modern democracy and comparable only to that of the ancient world. A particular interest in past and present forms of democracy and in the problems of democratic federalism produced his various remarks and studies on the Swiss democracy. His combination of sociological and political insights enabled him to prophesy its civil war (*Sonderbundskrieg*) and to understand the one constitutional form of Swiss federalism. The Swiss historian Dürr has praised the profound empirical analysis and the acuteness of his political perspicacity in the treatment of Swiss democracy.²

We must not forget that even *L'Ancien Régime et la Révolution* is dominated by the problems of the new social structure and its political institutions. It was the first introductory volume of a large work planned for three volumes and intended to follow the

¹ *Oeuvres Complètes*, vol. 8, p. 445 ff.

² Dürr, Emil, "Die Demokratie in der Schweiz nach der Auffassung Tocqueville's," *Baseler Zeitschrift für Geschichte und Altertumskunde*, vol. 23, 1925. Cf. *Oeuvres Complètes*, vol. 8, p. 464; vol. 9, p. 83; Correspondence with Gobineau, *passim*.

development of the social and political organization from the *ancien régime* to the Empire, and to describe the transformation of man in this period.¹

In the correspondence with Gobineau, especially in the letters reviewing Gobineau's *Inequality of Races*, the spiritual attitude of Tocqueville finds strong and sublime expression. Not only does he reject the content of the book, the conclusions of which he regards as questionable, but he revolts particularly against its biological materialism and the political consequences. There are the most important differences between the two friends in the interpretation of human nature. Gobineau knows man only as a biological being, Tocqueville understands man as living in freedom, in every moment experiencing the possible perfection of his personality. Against the materialistic pessimism and vital heroism of Gobineau, Tocqueville sets up confidence in the justice of God and spiritual heroism. Nowhere so much as in these letters do we understand how deeply Tocqueville was influenced by the spirit of Port-Royal, which taught that the greatest tension exists between God and the world and which engendered an almost Calvinistic rigor of moral sentiment.

Romain Rolland has attempted to describe this conflict as one of the generations, Gobineau representing the younger generation, which destroyed the liberal ideals of progress, humanity, liberty and justice after the disillusionment of 1848, and opposed to them a heroic pessimism. Rolland understands the conflict of the friends as symbol of an eternal movement of the mind. "It is one of the perpetual movements of the human pendulum oscillating between two poles and seeking the point of equilibrium. But the pendulum is too strong and always swings beyond this point. But this strength itself, these oscillations between the opposite poles are but the

¹ Unfortunately Beaumont, Tocqueville's friend and the editor of his works, has published only a few fragments of the continuation of *L'Ancien Régime et la Révolution*. The family de Tocqueville would place the learned world in its debt by publishing a new and complete edition of the works, including the unknown correspondence of Tocqueville and Mme. de Tocqueville, the restored integral text of the published letters, and the preparatory fragments of his last books.

rhythms of history, the breath of humanity."¹ The metaphor Rolland finds for the movement of the mind is very true and impressive. But he forgets that the thinking of the two men takes place in different spheres. Gobineau writes as a political thinker and is interested only in the political consequences of his ideas. In a sociological analysis his work can be correlated with the resentment of the vanquished nobility which had to call in question, minimize and even destroy the biological racial status, the vital value of the ruling class, in order to justify its own pretensions. Although Tocqueville's work contains the most important concrete political analysis, it is a philosophical one, pointing out the conditions of modern life, the political possibilities and the place of personal perfection in this world. From his view, human life is an incessant striving toward the fulfilment of its obligation to state and nation, and an aspiration toward perfection through spiritual freedom.

This is the legacy of Tocqueville for our times, his actual significance for our day. Therefore it is impossible to dispose of his work as part of the historical movement of nineteenth century liberalism. Tocqueville knew very well that his attitude was out of tune with his times and that he was sharing the destiny of all thinkers who transcend their epoch—solitude and misunderstanding. For this reason it is no accident that we repeatedly find utterances in his letters to different friends corresponding almost literally to a phrase of the aged Goethe to Zelter "We are the last of an epoch, which will not return so soon."

These words cannot be interpreted as an expression of a dying class. Rather do they present in an arresting form the consciousness of the solitude of a spiritual existence combined with an understanding of the complexity of human nature and its permanent structural elements in the midst of the political interests of the different groups of his period. Dilthey wisely termed him the greatest political philosopher after Aristotle and Machiavelli.²

¹ Rolland, Romain, "Tocqueville and Gobineau," *Europe* (October 1, 1933), pp. 68-80.

² Dilthey, Wilhelm, *Gesammelte Schriften*, vol. 7, p. 104.

WILL GERMANY DEVALUATE?

BY ARTHUR FEILER

I

IS GERMANY going to devalue her currency? Both Dr. Hjalmar Schacht, President of the Reichsbank and Minister of Economics, and Count Schwerin von Krosigk, Minister of Finance, say emphatically, "No." Dr. Schacht proclaimed this policy with exciting fervor in his speech in Königsberg on August 18,¹ saying that Germany's big short term indebtedness, contracted for financing the creation of labor and rearmament, will have to be consolidated within an appropriate period in long term loans from the national savings. "It is our people's capacity to save that this consolidation ultimately depends on. But capacity to save will be proved only if there exists the will to save. And I hope that the many money theorists who, again and again, offer their bag of tricks, will realize from what I have said what mischief they will work if they go on promulgating their plans for devaluation. Whoever has followed my words will see that the financial accomplishment of the great task of the Führer depends only on confidence in the security and stability of the obligations of the Reich and of its enterprises. To injure the interests of the savers would be tantamount to the government's committing suicide, and would make impossible the realization of its program for diminishing unemployment and for rearmament. Finally, the creation of labor is to be paid for by saved surpluses of our economy, but this never must be done, nor can it be done by devaluating our currency."

And one week later, on August 25, at the opening of the Leipzig fair, Count Schwerin von Krosigk² uttered more calmly the same opinion. He also made strenuous efforts to justify those short term credits by saying that in his old fashioned belief, "credits are essentially something which has to be repaid," and that such a repayment

¹ *Frankfurter Zeitung*, Montag Morgenblatt, August 19, 1935 (no. 421).

² *Frankfurter Zeitung*, Montag Morgenblatt, August 26, 1935 (no. 434).

can be made only through taxes or through loans. He, too, therefore rejected devaluation. "We reject the many counsels proffered us and the criticism of our methods, which are founded on the structure and the special conditions of our country. Therefore we also decline to follow the proposal of devaluation, which may mean different things in different countries and may lead to most various results."

At that time it was impossible for persons outside of Germany to ascertain against whom such solemn manifestoes were thought necessary. There is of course in Germany a lot of talk and a latent fear of an imminent devaluation; this is merely the consequence of the actual economic situation. But there have been no signs to indicate that a serious movement for devaluation was already afoot, and even rather advanced; still less was it indicated who its advocates were and whence they derived their strength. Now this has become evident. The struggle for devaluation is going on within the National Socialist party itself, and it is possibly backed by big industrial interests.

This revelation comes from a book by Albrecht Forstmann, recently published in Germany under the seemingly neutral title, *Der Kampf um den internationalen Handel*.¹ The author is a member of the National Socialist party in which he occupies (or occupied) a post in the leading central organization. He does not fail to emphasize his business connections. His book is a big volume, clumsy, packed with a lot of statistical tables, mathematical formulae and graphs, and with all the other apparatus of ponderous scholarly work. Very likely this is the reason why it was permitted to be published in Germany at all. For the author's high regard for an "uncompromisingly candid, objective criticism of the measures taken by the government" (p. 86), which is "the only possible way to attain objective judgments and to avoid great dangers" (p. 86) and which, besides, it will "never be possible to suppress" (p. 393), is

¹ Forstmann, Albrecht, *Der Kampf um den internationalen Handel*, Berlin: Haude & Spenerische Buchhandlung, Max Paschke (1935). An earlier book by the same author (*Wege zu nationalsozialistischer Geld- Kredit- und Währungspolitik*, Berlin 1933) already showed the same tendency.

not exactly shared nowadays by his own government. As a matter of fact, the whole book is one single colossal pamphlet against the economic policy of the Reich, represented in his view particularly by Dr. Schacht. We may therefore abstain from discussing the author's general argumentation. The thing which counts in this book is its disclosures of the present German situation and possible future developments.

II

It is characteristic of the dictatorial methods of the totalitarian state that a truly comprehensive picture of Germany's actual economic situation is not to be found in any organ of publicity. Newspapers, periodicals, official statements, bank reports and the like publish a lot of isolated details. But nobody in Germany dares publicly to combine these mosaic fragments in such a way that a real judgment could result. Apparently even men in leading business or administrative positions, who formerly considered such a conclusive survey indispensable, now very often renounce all attempts in this direction. As a matter of fact the picture, which can be had in spite of all the gaps in the official information, is dark. The present writer has shown this in an article recently published in the *Wharton Review*.¹ Forstmann in his book affords very interesting confirmations from the inside.

First of all he states quite clearly that the German recovery is only a *Pseudokonjunktur*, a sham business upswing, because the impetus given by public works, rearmament and so on "could not develop into a natural recovery" (p. 242). "Diminution of unemployment is enomically sound only if it results from increased normal economic production" (p. 12). "If one wants to get rid of unemployment, one has to get rid of its cause. This means one should not have work done that results not from a demand for goods, but from the desire to eliminate unemployment; otherwise the elimination of unemployment would be only a technical, not

¹ Feiler, Arthur, "Germany's Spending Program," *Wharton Review*, vol. 9, no. 1 (October 1935).

an economical matter. The extent of unemployment reduction so attained would be only the measure of the recoil threatened later" (p. 248). The credits spent for this kind of creation of labor are "nothing else than consumption expenses" (p. 12); they are "in principle an inflationary means" (p. 248). This results in rising prices: "The costs of living in Germany not only did not decrease, but increased. . . . Germany today has by far the highest price level of all industrial countries" (p. 235). This again is reflected in a shrinkage of Germany's foreign trade, which "since 1933 declined more than in the rest of the world" (p. 239). It is reflected in contracting exports and consequently also in insufficient imports. "Our situation is characterized not only by the impossibility to pay our debts but furthermore by the fact that we cannot even finance the imports that normally would be necessary for maintaining our productive apparatus" (p. 189). Forstmann does not believe in the various artificial means advanced by propaganda or put into action as remedies for these evils. He does not believe in autarchy, which he regards as "entirely impossible, especially for Germany, on account of her insufficiency of raw materials" (p. 91). He does not believe in the production of *Ersatz*, which "would require immense capital investments, while the erection of the plants would take years, and even then only fractions of the demand could be met by such substitution" (p. 175). Neither does he believe in the newly introduced "subventioning of exports by taxing those industries which profited from the sham upswing of the domestic market" (p. 277). Finally, he does not believe in the whole system of managed foreign exchanges, which "can be justified only as a short term expedient" (p. 193), although he fails to say what in his view "short" means. Just as Forstmann criticizes the *Pseudo-konjunktur*, so he criticizes the "pseudo-stabilization of the mark" (p. 234) as being "regarded economically, only a pure fiction, because the demand is confined by a system of restrictions to such an extent that in the foreign exchange market no price can form" (p. 301). As a result he feels it necessary to express vigorous warnings: "If the necessary steps for reestablishing the purchasing power

parity are not taken, the whole process is bound to run into a blind alley, and financing the creation of labor results in raising prices and in a further intensification of the disparity of purchasing power" (p. 247). "If on the one hand there is practiced a policy of credit, inflationist in principle, and on the other hand an economic policy of maximum prices, which is deflationist in principle, the result will be, in proportion to the extent of the measures applied, a reduction or even destruction of the profits of production, and finally an enforcement of production at a loss—that is, a compulsion toward the eating up of the productive capital. And if at the same time formation of new capital were expected, of course impossible under such conditions, the maximum of contradictions would indeed be reached" (p. 338). "Rearmament demands sufficient means for financing it, and this again involves considerable economic consequences. If these consequences are not made economically bearable, the financing might possibly be arranged, but this would create at the same time the danger of a reaction which in the long run would imperil the success of the whole policy" (p. 205).

III

These warnings sound very similar to those uttered by Dr. Schacht and Count Schwerin von Krosigk, both of whom emphasize unequivocally the necessity of sacrifices by all strata of society. Yet Forstmann's conclusions are just the reverse of those of the two ministers. Throughout his four hundred pages he never tires of stressing his belief that the decisive cause of all the dangers threatening the German economy of today consists in the pseudo-stabilization of the mark—a stabilization which his scorn allows him to cite only in quotation marks. Germany, he states, must regain her ability to compete in the world's markets which has been destroyed by the purchasing power disparity, artificially created and maintained by the artificial maintenance of her currency. "Germany's restoration to health presupposes a drastic lowering of the standard of living in all directions" (p. 95). Such a lowering could be at-

tained either by "deflation" or by "devaluation." And emphatically rejecting the first as "entirely anti-social" (p. 91)—not recognizing the striking similarities in the social consequences of both of these means—he as much more passionately urges devaluation.

Briefly summarized his prescriptions are the following:

- (1) The German currency is to be depreciated to—to, not *by*—about 30 per cent of its present value (p. 301).
- (2) Such a depreciation to about 30 per cent would not only restore the purchasing power parity, but would also allow "a credit policy of an expansive character as compensation for the lack of liquid capital" (p. 304).
- (3) This expansion of credit—at low interest rates (p. 305)—is assumed to raise the internal price level by about 100 per cent, that is, to double its present height (p. 300), of course in the new 30 per cent currency.
- (4) The duplication of the price level by means of credits, the nature of which is admitted to be "inflationary in principle" (p. 307), would on its side correspondingly diminish the real value of all debts (p. 279): it would "reduce their now unhealthily increased burden to a healthy degree" (p. 195).
- (5) "There is no objection to taking the same course as the United States did, namely, previously to convert by law all obligations of German citizens, payable in gold or in foreign currencies, into Reichsmark obligations, no matter whether the creditors are Germans or foreigners" (p. 293).
- (6) Reduction of the costs of production by rationalization (p. 327) and by diminished overhead costs as a consequence of higher production (p. 278).
- (7) "The reduction of the costs of production may be attained as a healthy sequel to devaluation, in so far as this leads to more employment and the wage rate is kept stable simultaneously with increased working time" (p. 278).

- (8) To make the preceding rather obscure sentence somewhat clearer, the author finally suggests (pp. 327-8) an increase in the daily hours of labor by about 50 per cent, as it may become necessary to raise the nominal hourly wages also by 50 per cent, corresponding to the expected rise of the general price level (which is assumed above—see number 3—to be 100 per cent).

Forstmann adds: "In this way one attains to the necessary lowering of the standard of living inasmuch as wages remain the same but labor time is proportionately extended. If the demand for more work without more pay may look harsh at first glance, yet it is better than if no employment could be created at all. We must realize that we as a poor nation can come to better conditions only through hard work. It goes without saying that at such a time single individuals must not be allowed to make any excessive profits, least of all from favorable market developments. To prevent this must be the task of a purposive financial policy. But the economically necessary formation of capital is also to be taken into consideration" (p. 327).

IV

One might feel tempted to ask whether this program of our National Socialist author truly represents the "socialism" proclaimed again at the last party congress or whether it does not in reality portray a "capitalism" which in some respects would be harsher and more ruthless than anything envisaged for many a year. We may resist this temptation quite easily. We do not care to discuss the personal opinions of this individual author, in so far as they are individual opinions, nor even the particular details of his proposals. All this is most unimportant in comparison to the fate of Germany revealed by the struggle between the two German opinions represented by Forstmann on the one side and the two German ministers on the other—a struggle which is going on below the surface, hardly noticed until now and hardly suspected even by the German people.

What devaluation would really mean is most clearly elucidated by Forstmann's procedure of going to extremes in recommending a depreciation of the mark to less than one third of its present—artificial and unreal—quotation. Devaluation¹ first disburdens the debtor by diminishing the real value of his debts. Devaluation, therefore, disburdens the state as the biggest debtor, which means, practically, less need of taxes for paying interest and amortization charges on the debts, and in this way means relief for those who have to pay these taxes. Devaluation at the same time disburdens the private debtors, a result which of course is of the utmost importance for industrial enterprises and entrepreneurs as well as for the landowners, and which here again is more effective for the big ones than for the smaller ones. But the gains distributed by these means to one part of the population must, of course, be offset by losses to other parts. On the other hand, therefore, devaluation burdens the creditors by decreasing the real value of their assets. As a matter of fact it partly destroys the savings of those who have their savings invested in government loans, in corporation bonds, in mortgages, in insurance, in bank deposits and in other investments of this kind. Devaluation is in the first place a redistribution of wealth. And it is, second, a redistribution of income. For it charges the employees for the benefit of the entrepreneurs by depressing real wages and real salaries. In one word, devaluation is like taxation, benefiting indeed not only the state, as would a normal tax, but some private social groups as well, and pressing with accordingly greater weight on the other social groups, particularly on savers and on employees. These consequences of devaluation have hitherto not been so clearly felt in a country like the United States (nor in England and some other wealthy countries that applied the same measure), because so far it has been possible to compensate them to a great extent by other favorable developments, brought about by other expedients of economic policy with which devaluation could be combined. But if Germany were to devalue

¹ Cf. Feiler, Arthur, "The Pressure for Monetary Depreciation" in *Social Research*, vol. 1, no. 1 (February 1934).

she would have to do so under entirely different conditions, as a country with a great shortage of liquid capital and with a relatively small capacity to form new capital, and as a country with a high price level, with relatively low wages and relatively low purchasing power of the masses even today. The reward hoped for by those who advocate devaluation for Germany should be a new natural order of the national economy, abolition of artificial restrictions and regulations, restoration of the capacity to export and of the capacity to buy in foreign markets, and so, eventually, a real recovery. A high reward indeed. But the price of it, exacted by devaluation, would be crushing. And this price of course would have to be by so much the higher, the more drastically the currency had to be cut down and the more this devaluation were combined with inflationary credit expansion and consequently with a rapid rise of domestic prices.

It is very easy to see why the responsible men in the German government, under the peculiar German conditions, try every expedient before taking refuge in this last resource. They bear in mind that Germany must buy a great part of her raw materials from abroad at world market prices, which would mean highly increased domestic prices in a depreciated currency. They have in mind that Germany is heavily indebted to foreign countries in foreign currencies and that conversion of these debts into a depreciated German currency is to be attained only at the cost of heavy drawbacks, if it may be attained at all. They know that the German Reichsbank possesses only an insignificant amount of gold, so that a gain—such as, for example, the one realized by the United States Treasury through the depreciation of the currency—would not be available to Germany. They are also very likely to be fully aware of the fact that even after the most ruthless devaluation of the mark there is no prospect for Germany in the near future to reestablish a normal functioning of the foreign exchanges and a naturally stable currency without stringent restriction and supervision. An obstacle to this is Germany's large foreign indebtedness, which would have to be refunded beforehand by long term

foreign loans or by some other arrangements. And a further obstacle, of even greater weight, is the fact that, as long as Germany regards herself as in a state of revolution, a mitigation of the management of the foreign exchanges could lead, at one moment or another, to a flight of capital for political reasons, which might overthrow at once the whole new stabilization.

Nevertheless, important as all these considerations are, there is another reason for the attitude of the German ministers, which is truly decisive. This consists in the social-economic consequences of a new devaluation of the currency, and in the political consequences that might flow from them. The German people have not yet forgotten the inflation of 1914 to 1923. Even ten years later its social results played a most prominent role in the collapse of the German Republic. Shall all this be experienced again? Particularly, are the remnants of the middle class which survived the inflation of the early twenties to be deprived a second time of a great part of their savings and of their modest incomes, thus actually effecting a total destruction of the class? The consequences would be incalculable. And if this is true politically, the same is true economically. It certainly is very easy to decree a devaluation. But in Germany it would be exceedingly difficult, and might prove impossible, to decree the point at which it should stop. Confidence in the currency once destroyed, nobody could prophesy to what point the accelerated decay of the mark would proceed. It would require a unique combination of lucky circumstances, national and international, to overcome these dangers.

This is what the men in the German government are so afraid of. But the much greater problem remains, whether they will be able to avoid devaluation, the dangers of which they clearly foresee. For the creation of labor applied mostly to unproductive purposes and for rearmament they have spent enormous sums of money, and they must continue this spending. In one way or another the German people, already exhausted by the war and by all that followed, will have to pay for this. Now the German government sets its hopes upon recovery, upon higher prices in the world markets that

may diminish the disparity between the German and the international price level, and upon higher domestic tax revenues ("It would be entirely wrong to discuss reduction of taxes," the Minister of Finance announced). But at the same time the inflationary consequences of excessive spending are no longer to be concealed. Their result is that the German government is compelled to resort to constantly increasing regulations and restrictions and that even so the social pressure is continually growing. German economy is running a race with fate. Will not the end be devaluation, in spite of all governmental assertions and proclamations? "It is self-evident that in our situation devaluation could not be practiced in the same way as, for example, in the United States, but that the new parity of the currency must be proclaimed at one strike without warning," writes Forstmann (p. 291). Dr. Schacht too is undoubtedly quite familiar with this recipe.

THE PROBLEM OF VERIFYING THE THEORY OF TECHNOLOGICAL UNEMPLOYMENT

BY ALFRED KÄHLER

I

The Development of the Problem

1. THE SITUATION IN GERMANY

Socialist theory in Germany before the World War was for decades closely bound up with the concept that mechanization of production must permanently increase unemployment. Marx had used this "displacement theory" as the central point of his entire system. It served as the essential basis for the doctrine of the "industrial reserve army," which in turn was basic for Marx's theories of wages, profits and the collapse of capitalism. In the last decades before the war, however, the advocates of this theory found themselves very much on the defensive. It is true that the many theoretical attacks upon the displacement theory were incomplete and could be refuted, but on the other hand it was not possible at that time to verify the theory statistically. Even though unemployment rose in crises, it continued to fall to a minimum again in periods of prosperity. Werner Sombart¹ attempted to reconcile the theory with economic development by asserting that Marx claimed not that unemployment would steadily increase but that average unemployment throughout the cycle would increase. A small amount of unemployment in a period of prosperity need not therefore be any proof of the incorrectness of the displacement theory, if only unemployment increased from crisis to crisis. But even this increase from depression to depression was difficult to demonstrate. More-

¹ Sombart, Werner, review of Wolf, Julius, *Sozialismus und kapitalistische Gesellschaftsordnung* in *Archiv für Soziale Gesetzgebung und Statistik*, vols. 5 and 6 (Berlin 1892).

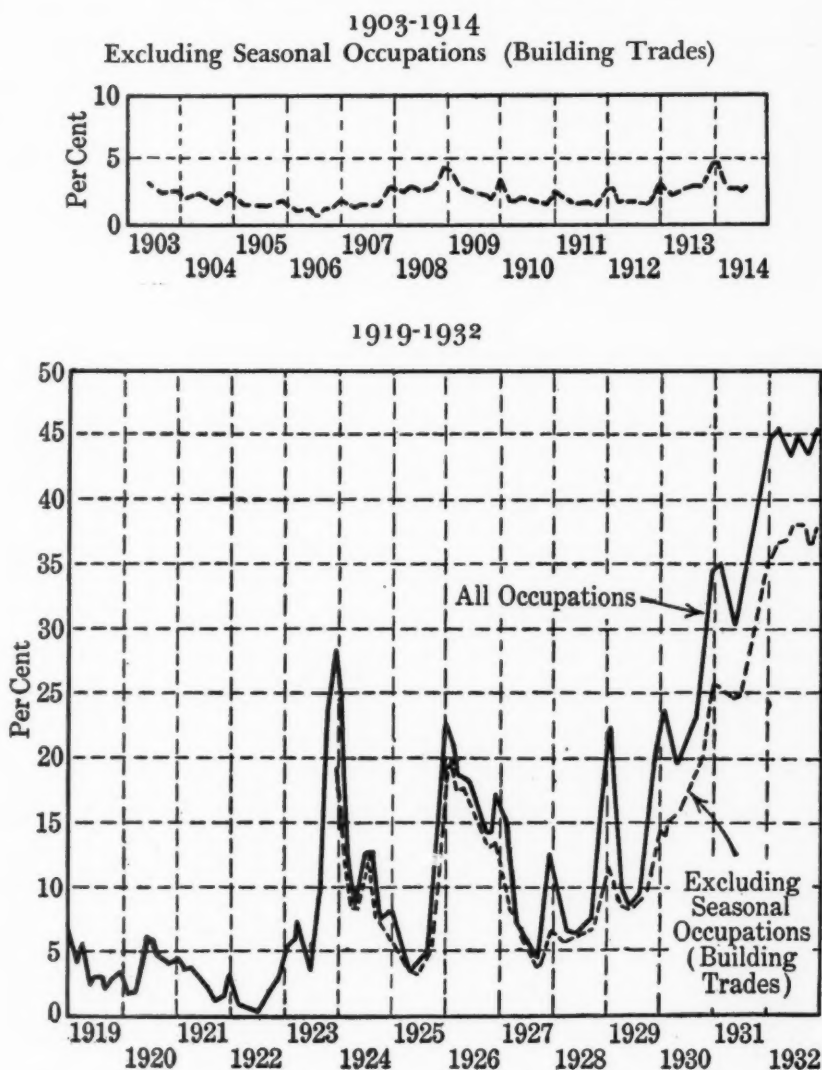
over, since the Marxian displacement and cycle theories were only loosely connected, it was difficult to see how cyclical unemployment might be used as statistical proof of the displacement theory.

Another phenomenon in Germany also worked against the displacement theory. Although mechanization occurred in the main in manufacturing, employment opportunities diminished only in agriculture and increased relatively fast in manufacturing. Franz Oppenheimer¹ then concluded that it was not the machine but the legal relations governing the ownership of land in agriculture which were the real cause of the displacement of labor.

But since in the last prewar decade unemployment was not very large even during crises, the controversy over the displacement theory subsided. The theory certainly was not disproved; nevertheless it was not possible to discover statistical proof of the accuracy and significance of its approach. In the postwar years, on the other hand, almost every country showed an extraordinary amount of unemployment, but for a long time it was explained as a consequence of the war and of the so-called structural changes in world economy. Until 1923 Germany was one of the exceptions to this general situation. Almost to its very close inflation was able to keep unemployment very low or at least within the limits of prewar unemployment. Inflation was followed by a stabilization crisis, which was succeeded after a few months by an expansion of credit and declining unemployment. Germany then entered upon its period of rationalization, in the course of which all economic groups, including the trade unions, advocated most enthusiastically a policy of imitation of the much admired increase in productivity in the United States. The first great cyclical crisis in 1926, which sent unemployment to a level three times as high as the prewar level (see CHART 1), failed to disturb the belief in the unqualified advantages of mechanization. Not until the following year did skepticism creep in, when despite an extraordinarily vigorous cyclical recovery, unemployment fell below one million for only

¹ Oppenheimer, Franz, *Das Grundgesetz der Marxschen Gesellschaftslehre* (Jena 1926) p. 56.

CHART I. UNEMPLOYMENT IN GERMANY BY PER CENT OF
TRADE UNION MEMBERS (A.D.G.B.).*



two months and then increased in spite of further expansion in production. In 1928, the year of greatest industrial production,

trade unions already reported an average unemployment of 8.5 per cent among their members while the available statistics on the prewar period showed that between 1903 and 1914 unemployment did not rise above a yearly average of 3 per cent, even in depressions (see CHART 1). The iron and machine industries did not reach their production peaks until 1929, a year during which two million were unemployed. This increasing unemployment without actual cyclical collapse slowly changed public opinion concerning the effect of the machine. The science of economics, however, remained silent for a long time, except for Birk's published address,¹ which appeared as early as 1927 and which returned completely to the old prewar displacement theory. Only in the succeeding years, with unemployment of from three to six million, did German economics turn back more and more to the old theory. The situation was similar to that in the crisis year of 1821, when Ricardo in the third edition of his *Principles* asserted for the first time that he had changed his opinion regarding the problem of the machine and that he no longer believed that the introduction of the machine was always an advantage for all classes.

Following the general change in opinion in Germany there appeared an extensive literature on the question of displacement, which, however, was almost exclusively theoretical in nature. Again the argument was advanced that mechanization must under certain circumstances cause an increase in unemployment. On the other hand, hardly anyone tried to cite the existing large unemployment as direct statistical proof of the correctness of the displacement theory. As in the past, this unemployment was considered to be cyclical in character, and therefore to be differentiated from real technological unemployment.

2. THE DEVELOPMENT OF THE PROBLEM IN AMERICA

A similar situation arose in the American literature, although here attention was centered mainly upon the statistical investiga-

¹ Birk, L. V., *Technischer Fortschritt und Überproduktion* (Kieler Vorträge, Jena 1927).

tion of the question of displacement. There were also many studies of individual industries which took the position that workers are displaced by machines and often demonstrated that displaced workers were not reemployed in the same industry. One need only refer, for instance, to the publications of the Department of Labor concerning the amusement industry, agriculture, the tire industry, the electric lamp industry and other industries. But against these monographs favoring the displacement theory, W. I. King¹ could point out that in 1929, at the end of the period of prosperity and apparently also at the end of an extended period of rationalization in the United States, there was only a relatively small amount of unemployment; from this it was concluded that only to a small extent could mechanization be held responsible for the unemployment that arose later. According to King, this unemployment was far more a consequence of the decline in the volume of production during the depression, and "it is absurd to blame technological improvements in methods of production for the evils resulting from our antiquated and unsound monetary system." If the displacement theory, however, is not permitted to draw upon the unemployment which has developed during the crisis, then statistical proof of its correctness still remains impossible, since in the most favorable moment of the last prosperity period there was indeed no substantial unemployment. The question is therefore whether the statistical verification of the displacement theory must limit itself to the period of prosperity or whether in building up its evidence it may also utilize the unemployment which developed during the crisis.

Naturally, the answer to this question cannot be given on a purely statistical basis. We must first consider the arguments which the displacement theory offers for the proposition that the machine causes unemployment. Only then will we know what series might be necessary in order to undertake a statistical verification of the theory and how much of the unemployment might, in the most favorable case, be associated with mechanization.

¹ King, W. I., "The Relative Volume of Technological Unemployment" in *Journal of the American Statistical Association*, *Proceedings* (1933) pp. 33-39.

The Bases of the Theory of Labor Displacement

There are three groups of factors leading to disemployment which singly or in combination determine, according to the labor displacement theory, the development of unemployment. These groups of factors constitute the demand, capital and disproportionality arguments of the displacement theory.

1. THE AGGREGATE DEMAND ARGUMENT

The factors in the first group are the most familiar. Here it is maintained that the machine makes it possible to satisfy a given demand for goods with fewer workers. The intensification of labor results in a reduction of the labor force, which can be avoided only if the market for goods is expanded. The theory of compensatory adjustment assumes that such expansion of markets must occur automatically, since the funds saved on the wage bill must reappear either in the hands of entrepreneurs or, because of price declines, in the hands of consumers. These funds are sufficient to reemploy the displaced workers. The only condition for the validity of this argument is that the existing volume of currency remain unchanged; the latter is indeed not affected directly by the mechanization of production.

It is easy to demonstrate, however, that ordinarily a constant volume of currency is insufficient to permit a complete compensatory adjustment. Let us assume, for example, that, with aggregate physical production and prices remaining unchanged, the funds saved on the wage bill are transformed into property income; that is, are paid out in the form of profit or interest. The displaced workers are then eliminated as purchasers of goods, which are acquired by the recipients of the additional property income. The existing volume of currency is thus completely used. To reemploy the displaced workers the volume of currency must then be increased.

If prices decline the required expansion in currency need not be as large. But even then complete compensatory adjustment without

some addition to the volume of currency would be possible in only a few cases, for technological progress usually involves an increase in interindustrial exchanges (Böhm-Bawerk's *Zwischenumsätze*). The widening spread between the aggregate value of product and the aggregate value "added by manufacture" absorbs a certain amount of currency, so that even with falling prices an expansion in currency is needed, unless of course the price decline proceeds at a more rapid rate than the rise in productivity. The latter condition, however, implies a crisis and may therefore be disregarded for the purposes of this argument. In fact prices cannot always decline as much as the decline in labor cost, because higher productivity is as a rule achieved with the aid of larger capital investment; on account of the resulting increase in interest payments it is impossible to reduce costs and prices by the full amount of the saving in wages. This is commonly overlooked, because a rise in productivity is generally described as an increase in the net product per labor unit and no attention is paid to capital, the second production factor.

It follows therefore that unimpeded reemployment of displaced workers requires an increase in the volume of currency. Only so long as this takes place will there be, on the side of aggregate demand, no obstacles to compensatory adjustments. If the expansion of currency ceases, newly displaced labor cannot be reemployed without more than proportional declines in prices. It may be added further that if the volume of currency is eventually reduced the compensatory adjustments already accomplished would necessarily be undone.

The business cycle has a bearing upon this theory in that during prosperity, when credit is expanding, compensatory adjustments should take place quickly. In depression, on the other hand, deflation increases and prolongs labor displacement.

2. THE CAPITAL ARGUMENT

The main, and also the oldest, argument in support of the displacement theory is that centering upon capital. In Ricardo's life-

time this was of necessity also the only argument. To begin with, Ricardo like Smith assumed the existence of an unlimited desire to consume. Moreover he subscribed to Say's theory of markets, according to which the supply of one good is regarded as demand for other goods, so that he could not properly evaluate the insufficiency of aggregate demand as an obstacle to the reemployment of displaced labor. Finally, economic theory had not yet become aware of disproportionalities as a cause of major economic disturbances and serious unemployment. Thus the only factor determining the required number of workers was the magnitude of available capital. To this Ricardo added, in the chapter on "Machines" in his *Principles*, that the machine transforms circulating capital into fixed capital, or, in Marxian terminology, variable capital into constant capital; or, to use the approach of Böhm-Bawerk, mechanization intensifies the roundabout character of production. In each case the intention was merely to show that the introduction of machinery increases the amount of capital required per worker and therefore, with a given capital volume, reduces the number of employment opportunities, thus leading to displacement of labor. Compensatory adjustments cannot take place immediately because the accumulation of capital requires considerable time.¹

The logical soundness of this fundamental argument in support of the labor displacement theory can scarcely be doubted. Its statistical verification is, however, much more difficult. It is necessary to show that labor is disemployed because of the shortage of requisite technical equipment. But according to the studies of the Loeb group² and of the Brookings Institution³ there were available in the United States even in 1929 sizable reserves of physical productive capacity, although unemployment was but slight. How is it

¹ A critical discussion of the theories bearing on this question is to be found in Kähler, Alfred, *Die Theorie der Arbeiterfreisetzung durch die Maschine* (Leipzig 1933).

² Loeb, Harold. *The Chart of Plenty* (New York 1925).

³ Nourse, Edwin G., and associates, *America's Capacity to Produce* (Washington 1934).

possible then to explain disemployment by shortage of capital? Yet, despite this apparent contradiction, the capital argument is significant. For productive capacity must be interpreted to include not plants of every description but only those which are modern enough to be operated under current market conditions. Technological progress continually renders plants obsolete; although they are still in existence they are dead from the economic point of view. Such a definition of economically relevant productive capacity naturally adds to the difficulties of statistical measurement of production reserves, but statistics which do not take account of the feasibility of profitable operation are valueless.

Another question to be mentioned here is that concerning the periodic character of disemployment. This requires an explanation, for the reduction in employment opportunities must be assumed to proceed continuously unless for some reason the increase in productivity is periodic in character. The reason may be, as is often asserted, that the effects of technological progress are bunched at the end of a period of gestation for capital goods, a thesis which will be reconsidered in the statistical part of this article. Lederer¹ argues in this connection that disemployment is delayed during prosperity because inflationary price increases disguise the real unprofitableness of obsolescent plants. With the coming of price declines and intensification of competition, however, obsolete capital is destroyed and disemployment assumes the character of a mass phenomenon, while the newly accumulated capital makes only few employment opportunities because each labor unit requires a fairly large capital equipment.

3. THE DISPROPORTIONALITY OR UNDERCONSUMPTION ARGUMENT

If the two arguments for the displacement theory discussed above hold only with certain modifications which are closely related to the theory of business cycles, the disproportionality argument constitutes by itself virtually an entire theory of cycles. The starting

¹ Lederer, Emil, *Technischer Fortschritt und Arbeitslosigkeit* (Tübingen 1931) pp. 102-3.

point is again the saving on the wage bill with the corresponding reduction in purchasing power. Compensatory adjustments, however, are retarded this time not only by difficulties arising on the side of aggregate demand but also by incongruities between the expenditure-distribution of income and the composition of the output of the productive system. Whereas, according to the demand argument, the problem is merely one in the theory of currency and credit, the disproportionality argument centers attention upon all those doctrines of underconsumption which are closely linked with Rodbertus' name. That this involves questions other than those concerning the volume of currency was shown particularly clearly by Neisser.¹ Disproportionality, it is said, is due to the fact that saving on labor reduces the share of wages in the gross and net product. The weakening of consumer purchasing power thus effected would immediately result in the overstocking of markets if the funds saved from the wage bill did not reappear on the market as additions to property income. A change occurs nevertheless in the composition of demand, since the new income is spent in larger proportions on personal services and residential construction, or is more largely invested in industry and agriculture. The expansion in the demand for personal services and building construction is, however, a factor peculiarly favorable to compensatory adjustment. It permits the immediate reemployment of the displaced workers, creating at least for the time being new employment opportunities without necessitating additions to capital equipment. At the same time this type of compensatory adjustment protects the consumer goods markets from an immediate oversupply of merchandise since the reemployed workers resume their demand for goods. This unstable equilibrium of the economy depends, however, upon the continuation of demand for personal services and continued new investments in building construction and other production activities. And because the process of mechanization does not cease, the share of income going into capital investment

¹ Neisser, Hans, "General Overproduction" in *Journal of Political Economy*, August 1934, p. 433 and p. 465.

must eventually be increased even more. But the new houses require new tenants and the new investments in production a larger effective demand for consumer goods. Since, however, consumer purchasing power is kept low, marketing becomes increasingly difficult. To cope with this problem the distribution apparatus is enlarged, thus requiring more capital funds and larger stocks of merchandise. This expansion of commercial activity is itself an additional compensatory adjustment, though not quite a voluntary one.

Finally there is the development of instalment selling. The feasibility of this device as well as its necessity illustrates the lack of adjustment between production and consumer purchasing power. One invests capital in instalment finance in order in some measure to repurchase with it one's own output, or in order to make available to consumers purchasing power not afforded to them in the form of wages or salaries.

But these paths, too, lead to a dead end. Then the disproportionality between consumption and production makes further investment unprofitable. With investment in building construction and industrial equipment out of the picture, compensatory adjustments are eliminated. This implies a reduction in consumer demand and further diminution of investment opportunities.

Nevertheless there is no absolute oversupply of capital. The lack of adjustment between production and the ability to consume destroys investment opportunities for capital regardless of its magnitude, whether it be large enough to furnish modern equipment for all the workers or only for a small fraction of them. The disproportionality argument is therefore not inconsistent with the argument advanced above as to the time required for the accumulation of new capital in order to provide technical equipment for the displaced workers. The latter is the condition which enables employers to keep the labor share in the net product at a low level, which in its own turn is responsible for the fact that capital funds can be utilized only if investment proceeds on a large scale.

On the other hand, this "overcapitalization" theory is in flat

contradiction to Hayek's theory of crises.¹ According to Hayek production of goods of the higher order must cease because at the end of a period of prosperity there sets in a shortage of consumer goods. This reasoning flows logically from Böhm-Bawerk's theory of capital and from the opinion widely held among business cycle students that a crisis is immediately caused by the scarcity of capital. But the statistics of crises, particularly of the last one, are in all too flagrant opposition to this view.

The aggregate demand argument, discussed first, may once more be brought in at this point. If the volume of credit and with it of purchasing power is not expanded *pari passu* with the mechanization of production the overstocking of consumer goods markets will set in even more quickly.

III

The Statistics of Labor Displacement

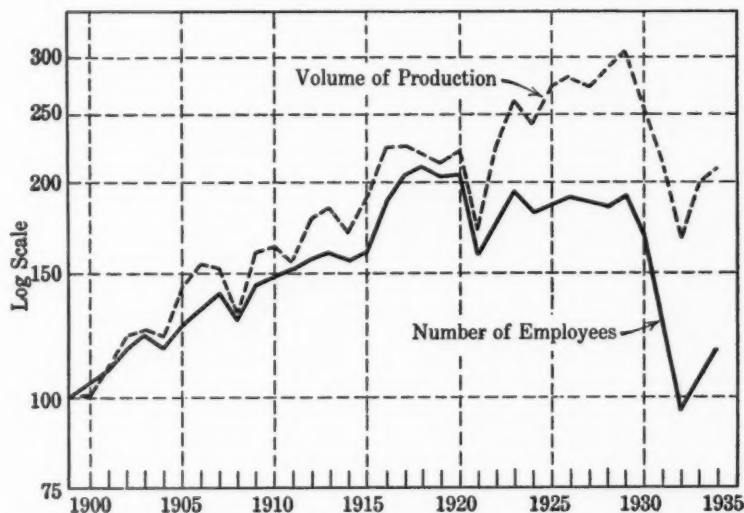
The preceding theoretical elaboration of the labor displacement theory has shown that its statistical verification or refutation demands the consideration of nearly all economic data. It makes assertions regarding money and credit phenomena, quantities of capital and relations involving capital, the distribution of income and disproportionalities in that distribution, increases in productivity, extent of employment, etc. One might therefore object that we are no longer dealing here with a mere consideration of the displacement theory, but rather with a consideration of the entire theory of the cycle. Whether this objection is correct or not, a fair evaluation of the displacement theory will always demand the weighing of all of these assertions. A static consideration of the problem which is too narrowly limited may actually be dangerous and may easily lead to erroneous conclusions. Naturally we too must limit ourselves here to the presentation of a few statistical series which are significant for the question of displacement.

The first question may well be whether after the war such ex-

¹ Hayek, Friedrich A., *Monetary Theory and the Trade Cycle* (London 1933) p. 56

traordinary increases in productivity were achieved as to justify the attempt to relate the present unemployment to technical development as a cause. The answer to this question can be given graphically by charting the development of the volume of manufacturing production and employment in the United States between 1899 and 1934. CHART II shows that until the end of the war

CHART II. VOLUME OF PRODUCTION AND NUMBER OF EMPLOYEES IN MANUFACTURING INDUSTRIES, 1899-1934 (1899=100) *



* Figures for 1899-1930 from Federal Reserve *Bulletin* (January 1931) p. 3 and p. 46; figures for 1931-35 are computed on the basis of the index of employment of the Bureau of Labor Statistics, the index of production of the Federal Reserve Board and the index of hours of work per week of the National Industrial Conference Board.

there was relatively little divergence between the two series. During that period an expansion in production called for a corresponding increase in labor. After the war, on the other hand, the volume of production continued to increase while the number of manufacturing wage earners remained constant or even declined. Although the composite curves tell us little about the developments in individual industries, still they do show that the mechani-

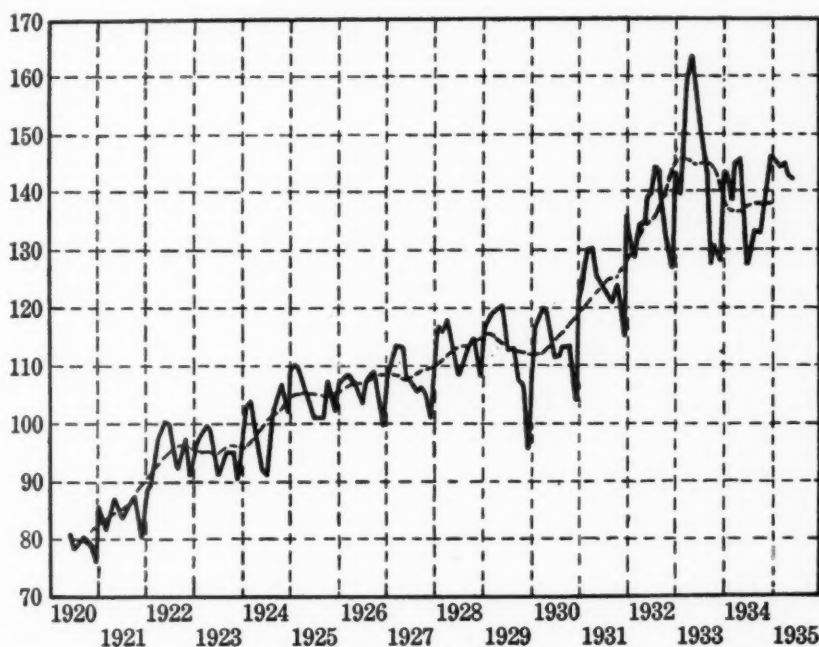
zation in the postwar decades was not simply a continuation of the prewar trend; it was in fact if not in appearance somewhat excessive, and may well have contributed heavily to the acuteness of the present depression.

More conclusions can be drawn from the curve of productivity for the period from 1920 to 1935, reproduced in CHART III. It is calculated from the monthly index of production of the Federal Reserve Board, divided by the product of the new Bureau of Labor Statistics index of employment in manufacturing industries, and the National Industrial Conference Board index of hours of work per week. The curve shows the gross value of product per hour of labor and should be distinguished from the curve of net productivity. The latter can only be based on the net value added by manufacture. Since mechanization tends to increase the consumption of materials per hour of labor, the increase in the net productivity of labor may be less than the increase in its gross productivity. Furthermore, the index should not be taken as absolutely accurate, since the data on which it is based are derived from various sources and do not cover identical groups of industries. The resulting error, however, probably does not seriously affect the utility of the curve for our purpose.

With regard to the composite curve it should be repeated in the first place that it indicates an extraordinary increase. This growth in productivity is distributed over the entire period. Nevertheless it is not difficult to establish that the periods of prosperity do not appear to have been especially favorable to increase in productivity. That is true of 1923, 1925 and 1929. Even more striking, however, is the rapid rise in the curve during the last depression, even granting that the peak figures for 1933 are accentuated by circumstances related to the uncertain currency and wages policy of that year. Possibly also the figures for 1932 are somewhat exaggerated, because the index of working hours is too sensitive. But the indicated general direction of the movement of productivity between 1930 and 1934-35 is probably hardly affected by these occurrences and these possible statistical errors. The result is important. It suggests

that a considerable part of the depression unemployment was brought about only after the break in the period of prosperity and as a result of the increase in productivity which then set in.

CHART III. OUTPUT PER MAN-HOUR IN MANUFACTURING INDUSTRIES, 1920-1935 (1923-25=100) AND TWELVE-MONTH MOVING AVERAGE*



* Calculated from the monthly index of production of the Federal Reserve Board, the index of employment in manufacturing industries of the Bureau of Labor Statistics and the index of hours of work per week of the National Industrial Conference Board.

The output per man-hour in 1933-34 was on the average not less than 25 per cent higher than the average for the year 1929, which meant that with the same volume of production, man-hour employment opportunities would be reduced by 20 per cent. Since during the depression the compensatory adjustments described in the first part of the article were not carried out, a portion of the present unemployment corresponding to this figure is directly

traceable to mechanization or rather to rationalization in general. This portion is also large enough to support Stern's¹ contention against King that an essential part of the present unemployment is due to uncompensated displacement of labor which took place after 1929.

The displacement theory would of course wish to attribute a larger percentage of the present unemployment to mechanization. This is easy to do, if the explanation of present unemployment is not limited to the increase in productivity in the period since 1929. If the comparison is carried back to the year 1920, for example, as Weintraub² has done for 1931, one would find an increase in productivity of 78.8 per cent, resulting in a displacement of 44 per cent in man-hours. Even in comparison with the peak of prosperity in 1923, there would be a decrease of 33 per cent in man-hours as a result of a 48 per cent increase in productivity. As compared with the above the decline in the volume of production during the present crisis from its 1923 level would have accounted for a decrease of only 23.5 per cent in man-hours. But theoretical considerations stand in the way of this explanation of present unemployment by comparing present productivity with that of earlier periods. If the workers in 1929 were fully employed, from the point of view of the compensation theorists this would indicate that up to that point the displacing effect of mechanization had been compensated for and therefore might no longer be used to explain subsequent unemployment. There is left then only the 20 per cent decrease in man-hour opportunities which developed after 1929, while the balance of the decline in employment is to be attributed to the shrinkage in the volume of production.

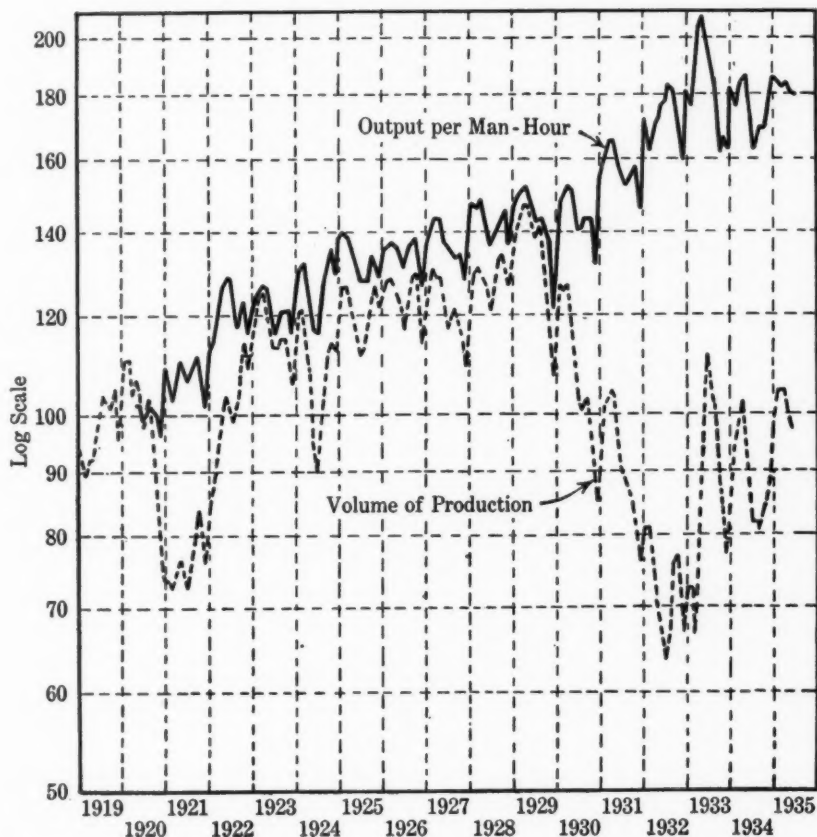
Before we take up again the question of the relation between mechanization and the business cycle, already discussed in the first

¹ Stern, Boris, "Technological Displacement of Labor and Technological Unemployment" in *Journal of the American Statistical Association, Proceedings* (1933) pp. 42-47.

² Weintraub, David, "The Displacement of Workers through Increases in Efficiency and Their Absorption by Industry" in *Journal of the American Statistical Association*, December 1932, pp. 383-400.

part, it might be useful to examine more closely this claim that compensatory adjustments for displacement occurred in industry at least until 1929. For this purpose let us examine the curves of

CHART IV. VOLUME OF PRODUCTION OF MANUFACTURING INDUSTRIES AND OUTPUT PER MAN-HOUR, 1919-1935 (1920=100)*



* Calculated from the monthly index of production of the Federal Reserve Board, the index of employment in manufacturing industries of the Bureau of Labor Statistics and the index of hours of work per week of the National Industrial Conference Board.

the volume of manufacturing production and of productivity (CHART IV). The curves are based on the monthly average for 1920 as 100. If employment opportunities measured in man-hours are

not to shrink, the volume of production must rise as rapidly as the output per man-hour. The production curve, however, shows that even in the record months of the prosperity periods of 1923 and 1929 employment opportunities in man-hours hardly equalled the 1920 average. The peak man-hour demand of 1920, on the other hand, was markedly higher than in the later periods. This decline in employment opportunities in manufacturing can also be perceived directly from the Bureau of Labor Statistics index of employment, although it does not take into account the decline in average weekly hours. This means that employment opportunities in manufacturing decreased between 1920 and 1929, in spite of a considerably increased volume of production and although the total number of gainfully occupied persons increased in this period by about 17 per cent. It is incorrect, therefore, to speak of a successful compensatory movement in manufacturing, even with reference to periods of prosperity. It should be easily comprehensible why, under such conditions, the depressions exhibited high unemployment figures. Nevertheless the significance of the displacement theory becomes completely clear only when the period after 1929 is considered. The curve of productivity rose even more and left the volume of production so far behind that it is doubtful whether the latter will ever again, through a corresponding increase in production, overtake the curve of productivity. The cyclical recovery must, in view of the present position of the two curves, bring an 80 to 90 per cent expansion in production in order simply to reach the man-hour employment opportunities of 1920. And this assumes that productivity will not have risen further in the meantime. This may well serve to illustrate statistically the effect of rapid rationalization upon unemployment.

Naturally the exponents of the theory of compensatory adjustments may argue that the adjustment need not necessarily take place in manufacturing itself. On the other hand manufacturing is not the only area in which labor is displaced. Jerome¹ even believes that in 1919-29 mechanization in agriculture, mining and steam

¹ Jerome, Harry, *Mechanization in Industry* (New York 1934) p. 22.

railroads was more intensive than in manufacturing. Thus the Bureau of Labor Statistics estimated the increase in productivity in agriculture between 1919 and 1927 at approximately 23 per cent, which is equivalent to the displacement of 2,530,000 persons; the number displaced was in fact reduced to 800,000 by the expansion of production.

The situation is as bad or even worse in coal mining, because here the rise in productivity since 1923 was accompanied by a reduction in the volume of output.¹

The number of employment opportunities was thus decreased in all major branches of production—agriculture, manufacturing, mining. If despite that there was comparatively little unemployment in 1929, this was due to compensatory adjustments of the type referred to in the theoretical section of the article. The proportion of gainfully occupied in trade and transportation, for example, increased from 18 per cent to 20.7 per cent between 1920 and 1930. Similarly the percentage in domestic and personal service rose from 8.8 to 11.3. And construction, the volume of which is not included in the index of manufacturing production, was extraordinarily active until 1929, even though its peak was passed in 1928.

These three types of economic activity require little capital per labor unit and thereby facilitate compensatory adjustments. On the other hand employment in these pursuits depends upon the consumers in the higher income brackets and, for construction, upon increased capital investment. This, however, like the expansion in the manufacture of capital goods, makes the entire economy more sensitive to cyclical changes. The equilibrium which marks the last stages of prosperity is therefore an increasingly unstable one, and is violently disturbed as soon as investment slackens. But this still does not prove that the machine itself brings about the final collapse of the temporarily attained equilibrium.

There is little support in the productivity curve for the theory mentioned above, according to which mechanization is carried through during prosperity and, after the lapse of a certain period

¹ Weintraub, David, *loc. cit.*, p. 397.

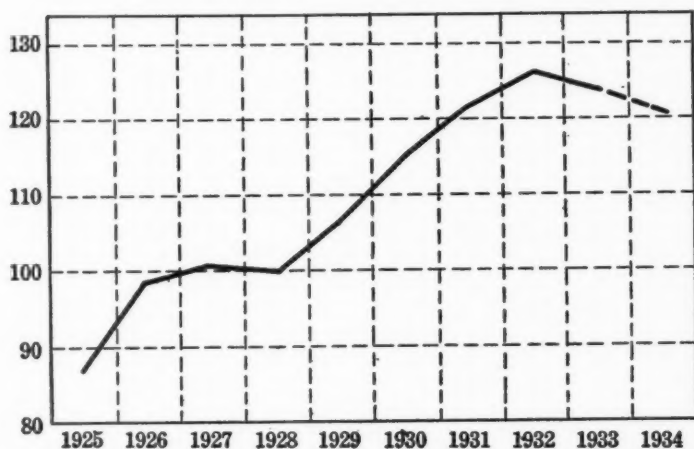
of gestation, is followed by widespread labor displacement leading to a crisis. True, there was a further increase in productivity in 1929, but the flattening of the curve in 1930 contradicts the view that the crisis is marked by a particularly steep rise in productivity. Also, in the 1923 cycle this increase definitely preceded the peak of prosperity. It may be argued that the technological prerequisites of the increase in productivity which occurred in 1931-33 were already achieved before the crisis and that their first effect was the crisis which temporarily inhibited the further unfolding of their consequences. This line of reasoning, however, is not particularly plausible.

On the other hand, the movement of the productivity curve supports Lederer's thesis that capital which has been rendered obsolete during a period of rationalization is discarded during depression. In any event the rapid rise in the productivity curve points to the fact that during this period the more efficient plants dominate the market. The discarding of obsolescent capital equipment, however, signifies also a recession in production and a further increase in unemployment. Mechanization therefore brings about unemployment during depressions not only through increased productivity of labor but also because it forces the discarding of capital equipment and a contraction of productive activities. The entire decline in production cannot of course be traced back in this way directly to rationalization. In order to do this we would have to follow the theory of disproportionality developed above, which cannot be accomplished here.

Finally it may be emphasized that not the whole increase in productivity during depression is due to the elimination of obsolete capital equipment. Undoubtedly mechanization, even if in the main it is typical of prosperity, continues also in depression. Upon it is superimposed rationalization in the broader sense of the term—tightening up of the organizational apparatus of production, intensification of the work tempo, etc.—a process carried on with particular vigor during depression. Such measures contribute to the increase in productivity only slightly less than the mechaniza-

tion proper of the prosperity period. It is furthermore clear that in depression employment is available only to the more efficient workers, which fact again raises productivity. It follows that when employment increases, the efficiency of the labor force, and with it productivity, drops; this is reflected in our curve for 1934 and 1935. Its decline in these years is not accidental; the productivity curve for Germany, presented in CHART V, exhibits a similar movement.

CHART V. OUTPUT PER MAN-HOUR IN MANUFACTURING INDUSTRIES IN GERMANY, 1925-1933 (1928=100) *



* Figures from *Wochenbericht des Instituts für Konjunkturforschung* (Berlin 1934, no. 45) pp. 209-210.

In conclusion, then, it may be repeated:

1. That compensatory adjustments for technological unemployment during a period of pronounced rationalization require an extraordinarily rapid expansion of production, an increase which was not attained in the United States even in 1929 as compared with 1920.

2. During depression the compensatory adjustments described above do not take place, while rationalization continues; the result is that displaced labor is not reemployed. Developments since 1929 make it appear improbable that in the next period of prosperity the pre-depression volume of employment opportunities in manufacturing industries will again become available.

3. Capital equipment which has been rendered obsolete as a result of mechanization is discarded in depression so that during this period mechanization contributes to a contraction in the volume of production.

4. Mechanization alters the structure of the economy in such a manner as to make it more sensitive to cyclical changes.

5. In order to explain the beginning of a crisis by the labor displacement theory it is necessary to accept the entire disproportionality or relative overcapitalization argument. The verification of the latter is beyond the scope of this article. Even so we believe we have shown that the labor displacement theory not only holds out certain interesting theoretical possibilities but also deals adequately with one of the most active elements in our economic structure.

SOME EUROPEAN ASPECTS OF INTERNATIONAL LAW

BY HANS SIMONS

TO RELATE events and experiences in the field of political development in one nation to simultaneous ones in the field of international relations is always a doubtful venture. Such parallels, evident as they may be, always lead to misapprehension. Yet some resemblances are so striking that they testify to certain common roots in all human order, even though it may be dangerous to apply the same notions to the very different structures of national states and of international organization. In particular, what is called international law has not yet acquired legality of its own but depends on the public law of the several states. In so far as in practice it goes beyond these bases it relies on moral or on purely political support.

Such a statement by no means belittles the importance and the validity of international law, but to realize fully its character may prevent many mistakes and disappointments. For some of the setbacks in the development of international law and organization are due to vacillating public opinion, today expecting from the law of nations what only the law of the single nation can supply, tomorrow proclaiming the breakdown of international law because it does not fulfil such expectations. This wavering is the more dangerous because moral and political support of international law rests finally on public opinion and the way in which it reacts to the issues presented in terms of that law. On the one hand, the people, the majority of whom have only very vague ideas as to what international law means, become all too easily the puppets of their government's propaganda. On the other hand, unguided reactions of the masses may weaken the force upon which the validity of any order rests, the moral backing of public opinion. Therefore to explain what international law can accomplish within

the realm of international relations is no less important than the teaching of civics in order to gain the citizens' active interest in state and community.

But an explanation of the nature and bearing of international law is more difficult than is instruction in preparation for useful citizenship. The state, in spite of class struggle and group interest, offers a reality of common concern which the so-called community of nations does not offer. A common cause may not be found in abstractions like "justice"; for, in the absence of any moral or institutional authority to decide whether a claim is just, the definition of justice must come at the end rather than at the beginning of public enlightenment. Yet there is a genuine common interest which underlies all sorts of regulation, whatever its technical, social, legal or moral character may be: namely, security. For the average individual, order means a status in which he can foresee what will happen if he acts or merely stands by in this or that manner. Law in particular means a basis on which he can calculate whether his actions entail certain consequences, so that he will be able—at least to a certain extent—to bring about or to avoid situations according to his wishes. This sort of security, with all its implications, seems to him even more important for his personal well-being than is justice. People may complain of injustice and yet what they really suffer from is insecurity—the lack of rules—even if a single decision turns out to be just. On the other hand, feeling that a regulation is unjust, they may accept it because it permits foresight and calculation.

Such a gap between ideal justice and real regulation is acceptable only so long as the security which replaces justice really exists. So soon as an order ceases to provide this substitute, the people, now unable to make calculations, lose all interest in the rules; being insecure, they are not afraid of an even greater insecurity, and therefore begin to threaten or destroy the order which has proved inadequate. As there are always certain people who are interested in special regulations because of a privileged security they thereby enjoy, a struggle arises to maintain the status quo. In the end, such

a struggle is bound to become violent; but in the first stage, it is evidenced mainly in the making of new rules explaining, reaffirming and extending the old status in order to make it more acceptable to the unprivileged. Neither law nor decree, however, can reestablish what has been disturbed by social or political forces. On the contrary, the nearer the system of regulation comes to completion and at the same time to complication, the more it deviates from justice and security. Except for technical regulations, which usually are more or less independent of the foundations of an order and may survive even its breakdown, an increasing number of enactments means their decreasing efficiency. This applies especially to fundamental questions such as those of constitutional rights and public security. Wherever an order begins to prove unfit for preserving security, this struggle for self-enforcement, which ends in a sort of auto-intoxication, can be observed.

Here is a striking parallel between a situation which is well known to all who have had the opportunity to watch events foreshadowing the breakdown of a political order, and the development of international law. International law is directly affected by a lack of security in its own realm, for where an attempt is made to work out calculable methods of settling antagonistic interests, incalculability in practical outcome leads to consequences such as may result from similar circumstances in any other established order. But international law is also indirectly affected by the uncertainty prevailing in the single states from which it draws its validity. No wonder that there have been more international conferences, agreements, treaties, pacts and protocols since the war than ever before.

During the first months after the World War the clamor for security was overwhelming. Millions of men had had the experience of being playthings of an enormous machine, built up without clear planning, working without previous calculation of its effects. All over the world the armistice was greeted with the hope that political uncertainty, social unrest and physical danger might now come to an end. Of course there were other feelings too, mixed with

this longing for a new certainty in life. There were hatred and vindictiveness—both less genuine in the average man, yet stirred up by politicians whose plans they could serve. This public mood lasted during the peace negotiations. In spite of heated discussions concerning the basis upon which the war should be ended, what was wanted was peace itself rather than any particular terms in its realization. That the monstrous conditions of the Paris Peace Conference could be drawn, that they could be accepted by all the Allied powers, and that they had to be accepted by the vanquished, is mainly to be explained by the state of public opinion which demanded peace regardless of the terms and methods by which it was achieved.

Accordingly, peace was first taken as a value in itself, worth heavy sacrifices. Even the vanquished felt that they shared the common cause of ending war and establishing peace, for they, too, believed peace essential for any later improvement of their situation. No doubt there were a few unswerving warriors who preferred danger and risk to the terms on which peace was offered. The majority felt—which is worth mentioning here and is described in the declaration issued by the German government in order to explain and justify rearmament—that millions of the German people eagerly clutched at the idea of a reorganization of international relations, and that to many Germans therefore the consequences of the defeat, the hardest ever seen in modern history, seemed to be positively necessary sacrifices for the sake of preserving the world in the future from such terrors as the war had developed. This state of mind prevailed also among the other peoples. Besides, peace plainly meant a better and more secure life. In what simple terms public opinion regarded the problem is clearly shown by the propaganda of an important peace organization, which offered its cards of membership in the form of a life insurance policy.

The simpler the reactions of public opinion, the more effective they are. This longing for a better world put an enormous strength behind all attempts to secure permanent peace. The League of Nations, despite its being a part of the peace treaties, became a really

popular institution, at least in Europe. Its outstanding principles were credited as a means of reestablishing the law of nations which, as an international order, was weakened before the war by the theory of sovereignty, and as a law of peace was nearly displaced during the war by the law of arms. With the moral ground of "open, just and honourable relations between the nations" and by "the maintenance of justice and a scrupulous respect for all treaty obligations" the community of nations seemed to be realizable. The creation of solidarity among states in a common effort to avoid new wars, the immolation of state-selfishness on the altar of international cooperation were not only dreamed of as future forms of foreign policy but earnestly invoked as operating forces of political action. During this period many men really thought it possible that even honesty in politics would not be too high a price to pay for enjoying peace and security. But from the very beginning of the diplomatic and political moves ending the war, honesty—actually characteristic of most of the individuals acting as representatives of their peoples—turned out to be inapplicable as a group quality.

Still, these moral prescriptions were taken for granted since they seemed to be prescriptions for peace. The same is true of democracy. Autocratic government, which an efficient propaganda pictured as the only cause of war, was lightly abolished. Home affairs played their part here; but in regard to foreign affairs, which at the end of the war were of the utmost importance, it was a common belief that a minimum homogeneity in the form of constitutional government was required for the reorganization of international order and state relations. It was thoroughly in accordance with this belief that the first American draft of the Covenant of the League of Nations opened with the words: "in order to secure peace, security and *orderly government*"—a formula which later disappeared from the draft and was finally replaced by the text: "in order to promote international cooperation and to achieve international peace and security." An early draft of the Covenant also contained a guaranty against revolution for the governments

of the member states; in its definitive form Article 10 only guarantees "territorial integrity and existing political independence," for it seemed too dangerous to embark on an attempt to enforce generally a special form of government, the more so because of the holy principle of sovereignty, which had to be preserved. Remembering these plans, one cannot help wondering what sort of government today would be worth the epithet "orderly," what sort of practical guaranty would be given to the withering democratic governments in Europe, and what special test of the desirable homogeneity would be applied to dictatorships.

But there was another way of securing the sort of democracy which survived the war in many of the victorious countries and which was introduced for the sake of peace in some of the vanquished: the establishment of the International Labour Organization. It should be made quite clear that this, as well as other political organizations decided upon at the end of the war, cannot be interpreted in the light of one motive exclusively but was the result of complicated forces. To describe these would be beyond the scope of this article, which deals primarily with international law and relations. Granted that in the Labour Organization the influence of the working class, especially as represented by the trade unions, was remarkably strong, still, from our viewpoint, the Labour Organization became for good reason part of the peace treaties, for it was a link in the chain of measures aiming at security. For the members of this international organization a certain standard of social order and political development was required, and it was hoped that by preserving this standard the ends of democracy in a capitalistic system would be served. Here, too, a certain uniformity was to be the necessary outcome.

It was not long before the stream of politics turned against the potential development of international solidarity which rested on the League of Nations and the Labour Organization. The first setback was the abstention of the United States from the League, in whose development its representatives had taken such a decisive part. Other governments quickly realized that the new methods to

be used in the meetings of the League Council and Assembly and in the special conferences could easily be misused for the old purposes of so-called national necessities. In consequence, the international-minded staff of the League's secretariat was gradually transformed into a body of national representatives who were openly understood to be engaged primarily in strengthening the position of their governments. When Germany entered the League, the whole apparatus had already become a tool of national policy, combined with a device for maintaining the political status quo in which the victorious nations were so keenly interested. Differing in their views as to how rigidly this status quo must be preserved, they were united in their determination not to drop any of the fruits of victory. Italy, under a new regime, had already declared a qualified sympathy with the revision of certain peace conditions, although not of those in which it was immediately concerned. Hungary, as a member of the League, pleaded on every suitable occasion for the "peaceful revision of the treaties." The Little Entente, doubtful of the ability of the League to maintain the status quo, had built up its own organization in order to preserve the peace conditions, especially against Hungary. France, disappointed by the refusal of the United States to sign the pact of mutual assistance devised during the peace negotiations, had constructed a network of new alliances in which the Little Entente was the most important knot.

Nevertheless, there arose a new hope that the solidarity visualized in the Covenant would become a reality after all parties to the Paris treaties had entered the League of Nations, thereby bridging the gulf between victors and vanquished. Even if the reconciliation of interests seemed difficult, there was a technical provision in the Covenant itself, permitting "the reconsideration . . . of treaties which have become inapplicable and the consideration of conditions whose continuance might endanger the peace of the world." But the force of international law, once strengthened by the united pressure of the public, was meanwhile being weakened by the conflicting currents flowing from the confused and intricate

developments and movements after the war. No other influence or interest was strong enough to put the machinery of revision to work; still less was there any common advantage significant enough to induce the conquered to renounce their claims. There was a common language, adapted to the ideas of the Covenant, by which national aims and ambitions were expressed in such terms as justice and peace. Yet the conflict of interests among the former foes remained intense. Peace, for the powers which were allied during the war, was identical with the facts established by the peace treaties and justice was at least supposed to be realized—so far as humanly possible—within the new international order. For the new members of the League, peace meant only a form whose content had to be vitally changed, and justice was the yardstick whose application would lead automatically to a thorough revision of the treaties. Aside from the question of good or bad faith on the part of those who used these technical terms of human relations, we may say that the two sides were using the same word in decidedly different senses. The one claimed to preserve justice embodied in a status of which it took advantage; the other demanded justice in place of a status which it thought absolutely unjust. In such a situation there is nothing but the word left; the concepts are irreconcilably divergent. Theoretically one can think of a process of advance by which the ruder contrasts may be eliminated to such an extent that afterward the concepts of justice may overlap; but practically there is no procedure known by which such a result can be achieved. Certainly some conditions of the treaties—especially those relating to economics—were rather quickly adapted to the development and the practical experience of the nations concerned. But unfortunately these adaptations, announced in the form of international regulations, were far behind the reality of practical needs. They could not ease the tension of discontent which was keeping open the gap between attempt and achievement.

The demand, therefore, that the international order be changed became a most efficient means of nationalistic propaganda, which, in its turn, helped to destroy the psychological and moral supports

of international law. As a matter of fact, discussion of the problems of international political order was for many leaders only a pretext for attacking the policy of a government to which they were opposed. For the average person, worry about foreign policy worked like a narcotic through which the difficulties in home affairs and the strain and distress of the social situation could be completely forgotten. There is no better way of uniting in an almost somnambulistic political decisiveness men who are definitely split into antagonistic social groups. The economic basis of international relations is seldom recognized by that public opinion which usually is quite aware of the class struggle and other domestic economic facts. The reason seems to be not only lack of information but an innate lack of insight. Human intelligence often does not like to carry reasoning to its logical conclusion; instead of proceeding along the line of cause and effect from the nearer to the farther, it drops the chain of thought at an unexpected point and runs loose. There is no satisfactory explanation for this fact; yet it cannot be denied that home affairs are more likely to be a matter of reasoning while foreign affairs are rather a matter of emotions.

Democratic governments yield to this human frailty or even indulge in it themselves. Dictatorships use it deliberately; therefore, they have to deny the moral values and to disperse the common feelings which strengthened the development of international law after the war. This does not mean that they intend actually to wage war. In the beginning it means only that the whole view of international relations has to be changed. First of all, the longing for security, deeply rooted in the bourgeois, has to be eradicated. Instead of the calculability of life, which during the depression had proved a delusion for the victims of inflation and unemployment, the famous rule "live dangerously" is proclaimed as desirable and worthy. The hope of prospering in the normal course of capitalistic development is displaced by the desire to seize every possible advantage that may accrue from danger in individual as well as in social life. Furthermore, any sort of legal status quo in which the dictatorship is not immediately interested is made to

seem ridiculous. Idolatry of order as intrinsically valuable or of legality as a special merit of civilization is renounced and change is proclaimed as an achievement in itself. Revision, the method by which injustice might be gradually resolved into a state of order which at least does not persist in being a *contradictio in adjecto*, is abandoned for the sake of real or so-called revolution, which deliberately puts a new injustice in the place of the old.

So far as these effects on international law and relations are concerned, there is no great difference between the fascist and the bolshevist dictatorship, the militaristic and the semi-socialistic dictatorship, the dictatorship of one class and that of another. The main thing is that none of them fits, theoretically or actually, into the international order based on the homogeneity of nations which is assumed to be identical with democratic organization. Public opinion is nowhere free; it depends on every conceivable force which is strong enough to organize or plastic enough to be organized for the purpose of propaganda. But spontaneous public opinion is relatively free, compared with that public opinion which depends exclusively on the government. Dictatorship prevents public opinion from finding its own formulæ and cuts it off from international exchange and equalization; by doing so, it deprives the law of nations of the only force behind it which can be really international. The less important resources of international law are also destroyed. The attempt to stabilize the social order by giving it a special backing in the form of international socio-political agreements, such as the International Labour Organization provides for, becomes meaningless so far as economic peace and security are concerned when trade unions are dissolved, and especially when basic forms of capitalism are abandoned. The community of nations, which after the war was re-introduced by the longing for peace and supported by a homogeneous group of states organized in the League of Nations, would perhaps have been able to withstand the tension created by the diverging interests of victors and vanquished, but it became less and less capable of making up for the disintegrating effects of political and consti-

tutional alterations in many of the individual states. All attempts to strengthen either the League of Nations or any groups united by common interests or by geographical facts only revived old methods, which for the time being may supply greater security but in the long run prove that no natural or moral unity of European nations is effective.

This dissolution seems the more dangerous because the evaluation of war has changed in the public mind, first in the countries which came under a dictatorship and subsequently all over Europe. The Covenant prescription for avoiding war had been even less than what public opinion after the war was ready to accept. At that time there was a strong conviction that it must be possible to regulate international relations reasonably enough to prevent any sudden outburst of irrational forces. The time given by the Covenant for mediation, deliberation and decision in the League Council or Assembly was supposed to suffice for cooling down heated passions. While it seemed impossible to reconstruct the old notion of just and unjust wars, the attempt was made to distinguish between legal and illegal wars; it was hoped that it might be feasible to eliminate illegal wars altogether by enforcing the rules of the Covenant even on states which were not members of the League, and to prevent legal wars almost entirely by using the conciliatory measures of the League. Such aims could not be achieved without the assistance of a public opinion which condemned war even in its legal forms and made no differentiation as to its purposes. But public opinion became doubtful as to whether the rather complicated machinery of Geneva could proceed as quickly as modern armies, motorized and equipped with airplanes. What could be done if new situations were brought into being by sudden enterprise, or if action and reaction followed one another so rapidly that it was impossible to state who was aggressor and who was attacked? Fiume and Wilna offered striking instances of such difficulties. The protocol of Geneva was intended to provide a highly effective combination of moral pressure and technical preparation in order to make aggressive war too risky to be waged.

Since it did not become valid, the Assembly of the League of Nations adopted resolutions strongly denouncing war of aggression, and in the Pact of Paris the attempt was made to reestablish the outlawing of war which in the public opinion of the postwar period had already been accomplished. Arbitration as a means of avoiding war was provided for in more treaties than ever before.

But still more numerous than the treaties and pacts are the reservations by which the single partners to such treaties have changed them or even made them meaningless. So the Pact of Paris is more declamatory than declaratory, and the whole network of arbitration has become so complicated by reservations that it has nearly ceased to be workable. These treaties and their restrictions both characterize the change in public opinion and represent the typical political manner of dealing with such changes. By denouncing or seemingly outlawing war, and by paying their respects to the cause of peace, European statesmen try to calm the growing nationalistic mood, but at the same time they try to placate this mood by inserting in their treaties reservations which nationalistic selfishness can applaud. It becomes a vicious circle. By giving in to forces that are too strong to be neglected and by weakening the effects of their treaties, statesmen and diplomats help to dissolve the few remnants of public support of international law, namely hope for security, eagerness for peace and receptivity to the ideas of solidarity, homogeneity and common interests which should be strengthened by such treaties. Hence peace and security are not ensured. People become suspicious of foreign policy and ask for other guaranties than the Covenant and similar treaties can afford; they press more intensely on their representatives, who in new treaties look for new help, with the same result.

But another failure is still more significant, namely that of disarmament. It is of the highest importance in itself and it stands symbolically for the whole period following the World War. The technical difficulties of disarmament, its social consequences and its maintenance and international control were not decisive factors in its failure. The real reason why in the end all the discussion

has led to rearmament lies in the contradictions of the system within which not only any political agreement but especially any moral effort must be realized. Since the war brought about social unrest and individual instability, the states, in order to maintain their control, had to strengthen their internal forces. Rearmament for this internal use, as applied by the European states by increasing and reorganizing all sorts of police, by using every technical device for fighting political and social opposition, has grown to enormous proportions. It is most unlikely that the same states will renounce, for the purpose of their foreign interests, those means of power which they find very useful in internal strife. The people in their turn cease to bother about moral justifications of state power, particularly when it is ruthlessly applied; they accept it on the grounds of usefulness or even of inevitability. Why should they accept international order on another scale? If they are told that a given international order lacks moral justification, they will find such a belief acceptable and they will take it for granted that their own government cannot dispense with the only means of ultimate efficiency in state affairs, namely force.

However, rearmament seems to be a kind of self-aid to which society turns in times of depression, a quasi-instinctive reaction of the body politic to the sufferings of the body economic as revealed in unemployment. This self-aid proceeds along the line of least resistance. It is easier to raise money for national defense than for any other purpose. Military technique is adapted to the most important task of modern policy, i.e. manipulating masses. Last but not least, military officers know how to keep men occupied even in idleness. So rearmament, prolonged terms of conscription, using civilians for military purposes, become not only a rather simple adventure but a useful one, a planned employment which offers many advantages to offset the heavy expenses entailed. It may be difficult to decide where in this case cause ends and effect begins; but disarmament certainly seems to be out of the trend of political and moral as well as of economic and social development. Nevertheless, rearmament has to be justified because of the

influence which flows from the postwar peace movement. Therefore, all sorts of alarms are raised, increasing the uneasiness which finally has to serve as an explanation for the very facts by which it was caused.

This is the present state of mind and things in European international relations. Fear, first produced as a means of furthering armaments, was so enormously increased by the armaments pushed forward under its influence that in the end peace in its turn returns for the time being to the point where it has a value of its own, as it had immediately after the war, as compared with the real danger of any new clash between the dreadful war machines which are now being built up in all countries. Genuine fear of war makes pacifist governments. Today, the display of the most efficient weapons is accompanied by declarations much more appropriate to the flourishing of palm leaves. But that complicates more than it relaxes the European tensions. For now the whole apparatus of international organization and the whole instrumentality of international law are loosened from the union they formed with moral claims for equality and justice and are used only as a means of preserving an order not because of its moral merits, but because of the elementary fact that it is not chaos.

Such an order of course loses much of its meaning for all who are subjected to it. On the one hand, the attempt to discard it is a rather innocuous undertaking. A state that hopes to gain what it needs without such concessions of interest as all order requires, finds no difficulty in doing so. On the other hand, even a country which does not like the forms under which peace is preserved may temporarily accept them in order to avoid the greater risks of war. Whatever the special interests are by which Germany and Russia were induced to exchange their places within and outside of the League, the dangerous course of international disintegration cannot be illustrated more vigorously than by this fact. Here is one country which a few years ago, in spite of all its grievances, accepted an order because of an inherent hope of possible changes in its content, a country which holds the key to European peace,

a country which it was one of the main objects of the League to keep in submission to this peace. This country is now challenging this order not, as it originally intended, from within by the peaceful means of discussion, persuasion and finally revision, but from without and avowedly by all the means implied in this position. Here is another country which at the beginning was not interested in the European organization; which, as it deeply doubts the possibilities of capitalistic order in general, took no active part in its development; which, at least, is an outspoken foe of the principles on which the other states rely. This country is now joining the League and putting up with its ideal implications for the sake of its practical possibilities.

It is only fair to say that these political events put the seal on the abrogation of the Wilsonian ideal as it was partly realized in the Covenant. This does not mean the end of the machinery and its functioning, but of the forces which at the beginning, driven by the hopes of a generation, attached themselves to the development of international law. Now the League of Nations, more than ever before restricted to European affairs, is merely a group of nations bound together by temporary interests; the touch of finality which colored the Covenant, despite its transient results, has vanished. Even the Holy Alliance, which claimed Christianity and divine rights as foundations of its human order, was more deeply rooted in the fundamental and coherent moral values of its time. At least it stood for one homogeneous group of interests, the traditional importance of which was significant enough to be accepted, under the cloak of religion. God and religion are often mentioned in European politics of today. But when the Swiss delegate protested in the name of the Christian religion against Russia being admitted to the League, he was ignored. A cloak of ideals, religious or moral, which does not cover any clear cut reality either of spiritual community or of more permanent interests, but only an equilibrium maintained by the mere chance of coincidence, becomes a worthless disguise.

It is not only the organization of the European countries form-

ing the nucleus of the League of Nations that is shattered, despite its unanimous resolutions. There are some basic ideals of international law itself which are eliminated by the development of political thought and moral evaluation. As a law of nature, international law is supposed to be founded either on social instinct or divine command. Both of these presuppositions were discarded in favor of a rational interpretation; reason was thought of as a means of equalizing antagonistic interests. But if social instinct is restricted to a certain group of people dignified either by nationality, race or class; if religion is either excluded from politics or adapted to it as a mere substitute for this restricted social instinct; if reason does not work and therefore is either formally dethroned or practically ignored, then apparently interest becomes the only driving force, and profit the only yardstick of social behavior. The Wilsonian idea was "that the peace of the world was superior in importance to every question of political jurisdiction or boundary." The practice followed by all nations, whatever the explanation may be, as proved by their postwar policy, is that national necessities are superior in importance to every international interest, and that uncertainty as to the outcome is the only limit to the methods which are applicable in pursuing national profit.

It is a matter of course that only with a minimum of sacrifice of the individual and the group can a community exist. But public opinion, which after the war seemed ready to offer up even palpable profits for the sake of peace, no longer allows the governments to renounce any chance for self-gratification. Once decisive limitations of sovereignty were accepted by all members of the League and tentatively imposed even on non-members; the community of nations, by protecting the minorities, established a significant precedent for settling internationally purely national questions. Yet following the trend of dissolution the Polish government could cancel its obligations concerning minorities without any consequences except a formal admonition from the principal powers. Many of the members of the League or of the European interrelationship which exists as a fact independent of

the forms of its legalization, play the same part in this quasi-community which many parties assume under a parliamentary system. They play the game without accepting the entity of conceptions and evaluations of which the rules are only a reflection. But this means a plain misuse not only of the rules but of the opportunities offered by the game.

This abuse receives a kind of justification from other rules which are substituted for those originally agreed upon. These new rules are not yet systematized, but they are beginning to develop out of the famous fundamental or inherent rights of nations. Of these, self-preservation, independence and equality are chiefly invoked. Respect, another such right, is only a formal consequence and expression of the standard which a nation sets up in terms of values which are accepted by the community, for example at present independence and equality; and intercourse, the last of these natural rights, is not regarded by any nation as being denied to it. Now, fundamental rights, if not equalized by fundamental obligations, carry always a disintegrating effect. Since self-preservation with nations as with individuals is more an instinct than a right, it may become pernicious for other states if not checked and gauged in terms of common concern. Consideration of this common concern was one of the fundamental duties the League of Nations tried to establish. Independence of the single state draws its relative value only from the reciprocity between itself and dependence, which is the reality of international relations. Independence, therefore, is much less important than the interdependence of states which urgently needs the regulating influence of international cooperation. Equality is a mere fiction so far as politics is concerned, and a mere legal presupposition which becomes meaningless if the legal order is contested by the same states which in respect to it claim equality. The formula of respect, which should be more than mere self-respect and self-praise, asks for a group or community which offers the scale of evaluations validating the fact of being respected.

But although the fundamental rights of states today are only the

complement of natural restrictions prevailing in every community, they are claimed regardless of this relativity as being standards in themselves. Neither propaganda nor public opinion connects them with their historical background or present political possibilities. This is impressively shown by the fact that they are especially claimed by countries in which the corresponding natural rights of men are explicitly or at least implicitly denied. The most ardent apostles of independence, equality and respect are the keenest foes of the parallel rights of many of their fellow citizens. Thereby it becomes clear that the proclamation of such rights starts not at all from a vision of human dignity, but is a mere slogan covering bare national interests. The notion of international law as it underlies the development of centuries—characterized by the attempt to derive the rights of the single state from a common source, be it God, reason, human nature or the final unity of humanity—has no meaning for a doctrine by which state and nation are put above all other values. The profit of the national community becomes the only goal and therefore the moral as well as the legal justification of every political measure, with the result that international relations are defined as being only an inevitable and complicated kind of simple self-satisfaction and peace, as any other value, is judged only by its actual usefulness.

So at least the circle is closed. After the war international law had a brilliant chance in European public opinion and thereby in politics. The attempt was made to maintain some of its moral presuppositions for the political purposes which the peace treaties served. But the very facts denounced such a combination of material and moral force. Politics turned against the order which was to be legalized by international law. Finally this law itself, whose procedures were not used for a reapportionment of political profits according to any sort of justice, offered some notions derived from justice by which the injustice of the one nation could be denounced by the other, thereby changing itself into a means of politics instead of being a check on it. In this *quid pro quo*, international law is becoming no more than a makeshift, an empty shell.

Science has been very busy constructing a solid theoretical basis for international law. The different solutions are partly satisfying logically, but none fits into the reality of international relations. On the one side, an order which legalizes to absolutely the same degree treaties agreed upon by the free cooperation of the parties and so-called treaties enforced by the victorious power, is not right; on the other side, a status in which every state is practically free to decide upon its own obligations, is not law. By the confusion of moral and material forces, of ideals and interests, without any authority for the settling of disputes concerning the merits of the one or the other, the sociological basis of international law was really undergoing decay. In a kind of feverish self-protection, European powers were active in creating more and more safeguards against this decay in the form of treaties, but could find no better foundations than the disorder in which international relations remained. This activity is analogous to building on swampy ground by piling stone on stone instead of testing once for all the foundation and then adapting the methods of construction to the needs of the situation.

Nobody is able to maintain an order which he himself questions. Therefore, the first step should be the revision of this order, not in terms of abstract rules or theoretical constructions but of the real distribution of forces and interests in terms of armament, industrial potentialities and natural resources. The material gathered and prepared by the League of Nations and its committees is of the highest importance as soon as it is freed from its involvement in technical abstraction and evaluated in relation to a political purpose. Of course this revision has to be restricted to Europe. The only practical merit of the methods of the League of Nations, which make European conflicts a world concern decided upon by representatives including America and Asia, was the easing off shortly after the war of certain neighborly disputes which could not yet be disposed of by immediate agreement. From the beginning, this Geneva method has been complemented by European groupings, the Little Entente, Locarno, the French alliances, the

Balkan Entente, the plans for an Eastern "Locarno" and for a Danubian pact. These even began to displace it. Thereby the technical possibility of finding European solutions may mature. A careful weighing should succeed in bringing about a decisive change in some European regulations. A task which was solved under the most difficult circumstances by the Congress of Vienna more than one hundred years ago with remarkable success and a kind of magnanimity for the vanquished, should not be unsolvable today.

It would not be worth while to consider any technical agreement without first fixing the content of the order which must be maintained. This would not be possible unless there were new definitions of international obligations and rights, not in the vague form in which they were offered by the Covenant, but in terms which, after all the disillusionings of the past, renouncing previous generalizations and unfounded idealizations, put the normal selfishness of interest and readiness for sacrifices into relation with reality. The history of international law up to the ideas and practice which underly the last treaties offers practicable material for such a task. Not before the content of the international order in Europe is reformed and the essentials of international law are redrafted can sanctions and enforcement be effectively applied. In the race between technical development and political adaptation, technique today has an enormous advantage. But if political forces should prove willing to follow, the science of international law and the methods of international government have to offer what would be needed for such an attempt at international pacification by means of an international police. As we have seen, there is no common spiritual basis left on which a European order can be rebuilt. But the absence of all but pure political motives may make possible a purely technical rearrangement of interests. Whether this will be done by a new effort to maintain the forms of peace in reforming its contents, or by a new European war waged in order to gain a new start for freeing international relations from their actual muddle — nobody knows.

CASE LAW AND SYSTEMATIC LAW

*A Descriptive Comparison of American and German Legal Thinking*¹

BY RUDOLF LITTAUER

I

IT is commonly held that the embodiment of Anglo-American law is to be found in court decisions. This observation might lead a layman to suppose that it is not very difficult for a judge to find the necessary legal rule for deciding disputes before him. It would seem that the judge needs only to search through the collections of decisions, perhaps with the aid of good digests and indices, until he finds a similar decision from previous cases.

In fact the process of making a decision on the basis of previous decisions is an extraordinarily complicated one. It is not possible to derive from previous decisions legal rules as simple and as clearly understood as those in statute books. The decisions were made for concrete cases. They represent evaluations of certain precise relationships and they weigh the consequences of the decision for the specific parties appearing before the court. Their purpose is primarily to convince the reader that the decision was a proper one for the case in question. The authors were more concerned with bringing together as many arguments as possible and less concerned with making sure that their thinking was exact and precise. Their desire to convince led to unnecessary repetitions of the

¹ The reader should be aware that this comparison is made by a German lawyer who has only recently made the acquaintance of American law. His main purpose in this paper is to explain to the American reader the methods of legal thinking in one of the main provinces of civil law. His attempt to describe American methods of legal thinking at the same time is motivated by his desire to set up a background against which he may set the characteristics of civil law. The American side of the picture, therefore, does not in any way purport to be an authoritative description. It should rather be read as showing the first reactions of a continental observer to American law.

leading ideas. Often they were unable to develop their thoughts clearly and they contented themselves with mere approximations and circumlocutory arguments. Only seldom will a single precedent offer the possibility of determining how the law is to be applied in the future. A rule reveals itself only gradually. It is only when the precedent has been cited in later decisions that it begins to take on a more definite form. Later decisions emphasize some aspects and concepts in the precedent and push others into the background. They either confirm the generalizations which were set up in the first case or reject them as too far reaching. They uncover and reject legal fictions or transform them into presumptions. They establish contradictions and overlappings in the formulations and set up new formulations. Or they may even use the decision either unconsciously or deliberately as authority for ideas quite different from those found in the original argument. Words may be torn from the context and put together in a new conceptual arrangement which is quite removed from that of the author of the earlier decision.

This gradual development of the rules is determined by two contradictory tendencies. It is in the first place the product of an analytical thought process. In the light of the subsequent series of legal cases the ideas upon which the first decision was based come to be more clearly comprehended and associated with definite characteristics. This process of gradual analytical fixing of the rule is, however, subject to serious impediments. The creators of the precedent are chiefly judges who desire to provide a competent decision for a particular case and this primary aim will often prevent them from analyzing carefully the particular precedents. For they must hold themselves bound by these precedents,¹ without respect to the question whether they represent good law or bad.

¹ We touch briefly here upon numerous problems which cannot be elaborated. The doctrine of the binding force of precedents, the duty of the judge *stare decisis*, has been developed with varying force in various times, countries and courts. It is widely accepted, however, even today. Cf. Oliphant, Herman, *A Return to Stare Decisis* (1928), and Goodhart, A. L., "Precedent in English and Continental Law" in the *Law Quarterly Review* (1934) p. 40 ff.

Therefore, if they really analyzed the underlying ideas of the precedents and followed the convictions of earlier judges, stagnation would set in. The only way out of this difficulty is that the judge should not always feel bound by the underlying thought of the earlier cases but should pay attention at times only to the wording of the decision or only to the actual bearing of the decision on the concrete case. In other words, it is sometimes distinctly harmful for the judge to investigate and comprehend the wisdom of the earlier judges. When he feels that it is necessary for new ideas to be introduced he will adhere only to the text and will make use of the many sided interpretations possible in the wording of any precedent. Similarly the art of distinguishing, that is, of placing the emphasis upon the unique and perhaps accidental character of the case, in order not to be bound by earlier decisions, even when their fundamental ideas are of a long range character, belongs to the legitimate tools of a judge deciding according to case law. The judge who applies the precedents and who is working for the development of the rule has therefore a wide field of activity. He can deduce from the leading ideas, from the text of the argument and from the decision, those possibilities of development which he desires to utilize. This selection is not, indeed, an arbitrary one. It is dependent upon the character of the case which is to be decided. The judge will utilize those similarities in the facts and arguments of the cases which he feels can be used as the basis for authority. What stands in the way of his desired result he will disregard. In this way legal rules develop gradually in accordance with the character and needs of the subsequent cases. Wherever the idea of the earlier decision seems valuable also for the new case, the new decision will contribute to its further analytical clarification. Where the needs of life call for new ideas, the judge, by pragmatic thinking from case to case, will divert the development into new channels.

In American case law the existence of these two tendencies of development, the analytical and the pragmatic, is clearly revealed in the two leading schools of jurisprudence. Legal realism and

sociological jurisprudence differ essentially in their respective emphasis on one or the other of these tendencies.

Karl Llewellyn has developed the clearest and most elaborate presentation of legal realism.¹ The central point in his thought, as well as in that of the other realists, is the recognition that future judicial action cannot be predicted merely by the use of deductive thought processes. The new realism has freed itself completely from the previously dominant deductive trends and is, instead, utilizing a sociological technique in gathering data on what happens when the judge "applies" the existing legal rule. Llewellyn asserts that what has hitherto been called a rule is nothing but a word symbol elastic in content. Through every new case which bases itself on the rule a new, and hitherto non-existing, meaning is given to this word symbol. There are first the traditional modes of thought whereby every jurist progresses forward. Then there is the fact that every judge has certain obligations and purposes, a "sociological attitude" and his "judicial conscience." Finally there is the fact that the elasticity finds its limits too in existing social conditions. The judge will never dare to turn away too sharply from the "social norms" which are deeply embedded in general legal convictions. The rule, therefore, does not predict anything definite regarding future legal conflicts but is an approximate guiding principle around which future developments will be oriented.

It is obvious that this doctrine represents the attempt to present the historical growth of the rule and its dependence on the character of new cases. Opposition to legal realism is due chiefly to the feeling that analytical legal thinking and the effort to bring order and clarity into the legal material have been thrust too much in the background. The field of practical law is much more under the influence of the other legal tendency mentioned above, that of

¹ Cf. in particular Llewellyn, Karl, *Präjudizienrecht und Rechtsprechung in Amerika* (Leipzig 1933) pp. 39, 79, 82, 83, 94, and "The Constitution as an Institution" in *Columbia Law Review* (1934) pp. 39, 40. See also the work of the behaviorist, Underhill Moore, "The Rational Basis of Legal Institutions" in *Columbia Law Review* (1923) p. 609, and of the psychoanalyst, Jerome Frank, *Law and the Modern Mind* (New York 1931).

sociological jurisprudence, represented by such men as Oliver Wendell Holmes, Roscoe Pound and Benjamin Cardozo.¹ These writers, despite their recognition of the gradual development of the rule, nevertheless are equally concerned in analyzing the legal thinking behind the precedent cases, ruling out exceptional cases and arriving at clearly formulated and workable rules. Unlike the realists they do not doubt the fact that legal rules can be developed which could be utilized for future cases. Such a legal rule is indeed far removed from what the continental jurist calls a norm. The norm is a legal prescription which by its very existence is to be applied to the particular case. The rule of sociological jurisprudence is only a working hypothesis, a suggestion for a better comprehension of future conflicts. The judge should not and will not give up the fight to allow for exceptions where the equities of the particular case seem to demand it, and new rules will ultimately be arrived at wherever these exceptions become numerous. Sociological jurisprudence desires that the law should further develop through this groping and experimental progress with such exceptional instances. Wherever age old doctrines are in vogue or when social conditions have entered a new course the law should be broken up step by step into isolated workable comprehensions of concrete cases. New experience, achieved by trial and error, then makes it again possible to analyze the material and to develop new "good working rules."²

¹ Cf. Holmes, O. W., "The Path of the Law" in *Harvard Law Review* (1897) p. 457; Pound, R., *Introduction to the Philosophy of Law* (New Haven 1922) and "The Scope and Purpose of Sociological Jurisprudence" in *Harvard Law Review* (1911) p. 140; Cardozo, B., *The Nature of the Judicial Process* (New Haven 1921).

² It should be noted once more that this description is made for the purpose of contrasting the continental and the American types of legal thinking. It therefore represents an artificial simplification of the picture, overemphasizing those points where the two methods differ most and not doing full justice to the manifoldness of actual life and the mansidedness of the views of those quoted above. There are, for example, entire fields of law, such as those of real property or of bills and notes, in which the rule has become so much a part of social reality that even when it no longer seems applicable it is either impossible or very difficult to alter it. Moreover, "*Stare decisis* is at least the everyday working rule of our law," i.e. the lower courts follow the traditional authorities and the higher courts operate with the concept that one must be "logical" in order to be just. Cf. Cardozo, *op. cit.*, pp. 20, 33.

Here, too, therefore, there are revealed unmistakably the pragmatic characteristics of case law. Within certain limits the peculiarities and accidental character of the particular cases that come up determine the most important developments, and historical peculiarities make possible the development of exceptional cases and thus become the first steps for new advances.¹

II

Continental practice also operates with the pragmatic way of thinking. Here, too, we can observe the further development of law from the character of particular cases.² It is, nevertheless, decisive for the thinking of continental jurists that the pragmatic approach is for the most part not in their consciousness and appears to be alien to their minds. We can point to an illuminating historical parallel. The continental jurist of today, in coming into superficial contact with case law, reacts exactly as the *doctores juris utriusque* of the Renaissance period in Germany reacted toward the customary Germanic law when they returned from their study of Roman law in northern Italy. They turned away from what appeared to them a confusion of variety and multiplicity "intricate and un-lucid" and prized the elegance of their *jus civile*.

This Roman law had several outstanding peculiarities. It aimed toward simplification, it reduced the legal problems to a "few clarified motives." It sought to form legal institutes with large, sharp and clearly defined distinctions and avoid hybrid conceptions.³ Thus two fundamental characteristics may be noted. In the

¹ Eminent practical work in the field of sociological jurisprudence has been done by the American Law Institute, which is supported by the law schools and higher courts of the land. The Institute aims to bring about a restatement of the law. This restatement is to be "a careful analysis of the subject and a thorough examination and discussion of pertinent cases." It is to be considered "both as the product of expert opinion and as the expression of the law by the legal profession." (See *Restatement of the Law of Contracts*, St. Paul 1933, p. iv.) These rules of the restatement are not final. No one conceives of them as setting up in any way a bar to the further development of the law in concrete instances. The same holds true of the several uniform state laws.

² Cf. Jsay, Hermann, *Rechtsnorm und Entscheidung* (Berlin 1929).

³ Cf. Schulz, Fritz, *Prinzipien des römischen Rechts* (Munich 1934) pp. 45, 46, 49.

first place, Roman law was *formally* rationalized.¹ It tied up the legal rule with definitely formulated characteristics of existing situations. Wherever these characteristics recurred in any legal conflict, the rule was to be applied without consideration, or with only limited consideration of other characteristics of the case. This formalistic rationalism is common to many other legal systems as well as to Roman law. In primitive law we have the linking of the legal rule to definite formal types of behavior, sacred acts or external marks. The essential character of Roman law, which gave it its vitality for so many centuries, is found in the further fact that it is also *materially* rationalized. For in Roman, unlike primitive law,² the points of contact for the formal rationalized legal rule were found not in charismatic knowledge nor were they established through other irrational motives. What was decisive was the observation of the real knowledge of everyday life. The Romans were good sociologists. In the development of their law they took into account the common elements in the ever recurring similarities in conflicts of interests. In order to achieve this goal they were ready to disregard, up to a certain degree, the unceasing but never completely comprehensible manifoldness of life. They emphasized the most essential characteristics of human events and pushed the unessential and more accidental aspects into the background. In other words, they set up types of conflicts of interests and related to these the legal rule which seemed generally most workable for each type. The difference between Roman and Anglo-American legal prescriptions is thus quite apparent. The Roman rule is not a working hypothesis and much less a guiding principle. It expresses a value judgment concerning the interests which in a typical fact situation lie in conflict with each other. It asserts that one interest must be preferred to another or that some compromise between them must be found. It calls for application to all future cases which fall under the same type and, as will later be shown,

¹ Cf. Weber, Max, *Wirtschaft und Gesellschaft* (Tübingen 1922) pt. ii, ch. 7, and especially p. 394 ff.

² *Ibid.*, p. 395.

for as long a time as this type is viewed as a "correct" comprehension of life. It does not consider whether or not this type of the particular character of a unique case is correct in all possible respects. In other words, it is valid, existing law, a *norm* and not a *working rule* like the rules of Anglo-American law.

The normative character of Roman law, which is also decisive for the continental legal thought of today, is usually misunderstood and misjudged by Anglo-American jurists. The much used comparison of the civil law to a slot machine, according to which the case is inserted into a legal apparatus above and the decision comes out below, is a distorted view of the subject and is at best applicable only to the jurisprudence of concepts in the nineteenth century which was influenced by quite other methods, as will be shown below. In Roman and continental law, as well as in any other legal system, it is impossible to subsume living cases under dead verbal formulæ. The legal rule provides the judge with only a definite, limited suggestion for his decision. It tells him what the essential points of conflict of interests are in a case, and that more weight is to be given to one interest than to another, or it allows him to bring definite interests into what seems to him to be an equitable adjustment. Even the strictest of these obligations, however, cannot change one fact, namely that it is the person of the judge who, by observing the concrete living case before him, determines whether or not this case partakes of the essential character of the type of conflict of interests which is at the basis of the legal rule. No decision, therefore, is a mechanical-logical subsumption. It is a human and subjective evaluation. A judge might, for example, be obliged by the norm to declare null and void any legal transaction in which one party has no experience in a particular field of activity, such as agriculture, and the other party takes advantage of this inexperience to secure the promise of a consideration far out of proportion to the obligation.¹ The typical conflict of interests which the norm wishes to solve is clear and the solu-

¹ "Entscheidungen des Reichsgerichtes in Zivilsachen," vol. 60, p. 10, concerning Deutsches Bürgerliches Gesetzbuch § 138.

tion itself is clearly formulated. But the judge himself has to decide whether or not the particular party before him is actually inexperienced in the given field of activity and is therefore entitled to the protection of the court, whether or not the other party has actually taken advantage of this inexperience and whether or not the consideration is actually out of all proportion to the obligation. The judge might have investigated most carefully the typical fact situation that had presented itself before the author of the norm, but the decision in the litigation before him will nevertheless be based on his own social experience, his legal training and his judicial conscience.

All of which means that the existence of norms which are supposed to be valid for all cases falling under the types of conflict of interest signifies merely a limited kind of restriction upon the judge. The bounds of this restriction are indeed quite plain. The judge is told definitely what points of dispute are involved in the decision and what is most essential. He is forbidden to attach any weight to interests which are ignored by the norm. It is not possible for him, as it is for the lawyer dealing with case law, to disregard the norm because of peculiarities in the new case. Beyond that, however, the judge is not bound. The issues which he has to decide are circumscribed but their decision remains in his hands.

III

Continental law, in so far as its legal rules are of a normative kind, is a legacy of Roman law. But it has other characteristics which distinguish it sharply from Roman law. The following remarks will be concerned with these characteristics.

In normative law there is a conceptual distinction which the case law jurist does not seriously take into consideration. It is that between the application of law and the creation of law. In case law these two aspects merge into each other. Every decision which supplies a new formulation to the rule or sets up an exception may become the first step to far-reaching new developments. In normative law such development is out of the question. Here ex-

ceptional instances and the utilization of the elasticity of word symbols are not the natural ways for the creation of law. The knowledge that the norm cannot do full justice to all individual cases, which in case law has the effect of creating new legal elements, cannot alter the validity of the norm. It is binding in every instance, not because it fits every case but because it is the best solution for the typical case. In general a transformation can come about only when the typical fact situation has become essentially transformed or the social evaluation of the typical conflict of interests has undergone a radical change. When such developments have taken place the continental law must set up new types and new evaluations. With this process of creation of new law we shall deal in the following remarks. It may be said briefly that this process on the continent rests on two factors, on the practical view of life and at the same time on the purely intellectual ways of systematic thinking. A brief historical exposition will best illustrate the significance of this statement.

Roman law was a casuist law, a collection of opinions and decisions in concrete cases of litigation. Despite some tendencies toward abstraction even in classical times, this was essentially true even for the *Corpus juris* of Justinian. The materials presented in this code are only loosely connected and "the interest in the individual case is dominant." "Clear disposition" and an aspiration toward a definite plan are absent.¹ In such a casuist law new legal concepts can be derived only step by step for specific problems and from experience, supported at best only through associations of experiences.² Experience alone can create new types and new rules. This Roman law did not survive antiquity. In the Middle Ages, when the *Corpus juris* was rediscovered, a completely different development set in. In the twelfth and thirteenth centuries the school of the Glossators of northern Italy attacked the newly discovered text with the exegetical technique of the medieval theologians. In activity extending over more than a century they compared count-

¹ Cf. Schulz, *op. cit.*, pp. 36-38.

² Cf. Weber, M., *op. cit.*, p. 395.

less individual textual passages, thousands of legal sentences, opinions and statutes. They combined related materials and set up on this basis abstract concepts which held the group together. When their work was completed, about 1250, the Roman law appeared for the first time in a closed systematic order, progressing from the general to the particular. This work meant more than the achievement of a new clear arrangement of the old material. A new spirit had entered. For the principles upon which the system was constructed and according to which the texts and classifications were ordered were of a definite character. They were those of the Christian ethics. The Glossators were scholastic theologians. The ordering of their legal materials was modeled after the divine order of the world, which likewise was logically deduced from primary principles.¹

The work of the Glossators was academic. Their successors, the Commentators of the fourteenth century, assumed the further task of developing a practically applicable law from the *Corpus juris* and the glosses. They fused together the Italo-Lombard statutory law and canon law with the Roman materials. Useful legal dicta, conforming to the dominant customs and court practices, were deduced from the abstractions of the Glossators and thus incorporated into the system. It was this law as developed by the Commentators and not, as is usually asserted, the *Corpus juris* itself which was received on the continent in the following centuries and which replaced the old Germanic folk law.²

The theological conception of law of the Glossators and Com-

¹ Cf. Kantorowicz, Hermann, "Über die Entwicklung der Digestenvulgata" in *Zeitschrift der Savigny-Stiftung*, vol. 30, p. 14 and vol. 31, p. 183; Goetz, W., "Das Wiederaufleben des römischen Rechts im 12. Jahrhundert" in *Archiv für Kulturgeschichte*, vol. x (1913) p. 25 ff.; Stintzing and Landsberg, *Die Geschichte der deutschen Rechtswissenschaft* (Munich 1880-1910) pt. iii, p. 111 ff.; Hoelscher, E. E., *Die ethische Umgestaltung der römischen Individual-Justitia durch die universalistische Naturrechtslehre der mittelalterlichen Scholastik*, Goerres Gesellschaft, Veröffentlichungen der Sektion für Rechts- und Staatswissenschaft, Heft 59 (1932), and *The Origin of Modern Continental Law from Medieval Scholasticism* (New York 1929); Sohm, R., *The Institutes*, 3rd ed. (Oxford 1907) p. 135.

² Cf. Sohm, R., *op. cit.*, p. 28. Those parts of the *Corpus juris* which had no glosses were not recognized as valid in Germany.

mentators has to this day given the continental law its character. The universities, which continued the scholastic tradition through the centuries, are, as formerly, the bearers of legal development. Continental law is "scientific" in the old historic sense of the term, not being satisfied with the concrete facts but aiming to master and fashion the world by the power of the human spirit. Every problem, treated "scientifically," is viewed in its wider relations to a rational order of life. The existent and the normative factors are never fully divorced. Practical experience and the pressure of social conditions seek to refashion legal rules on the basic line of the system of law. At the same time, however, the principles holding the system together with the help of the deductive ways of thinking always demand anew the subordination of life to their domination.¹

The place of science is manifested in the later history of continental law. In Germany² it united with the practical work of the *Reichskammergericht* in further developing the law of the glosses for the needs of the land and times. New interpretations of the material transmitted and new abstractions were set up in order to deduce new working rules for the courts. The law faculties were decisive authorities. The courts often sent them the records of difficult legal cases and requested their opinions as basis for their own decisions. Since the seventeenth century the theoretical speculative side of legal science has received renewed emphasis. Rationalism undertook the task of deriving all law from the dictates of reason and the nature of man. New systems and new deductions, based on reason, sought to legalize the liberation of the individual from the traditional social and economic bonds. Generations of jurists worked toward this goal, among them such distinguished personalities as Carpzov and Pufendorf in the seventeenth century and Boehmer, Thomasius and Stryck in the eighteenth century. It was at this time that the concept of the "closed legal system" was

¹ Cf. the fitting remark of Sohm, *op. cit.*, p. 145 ff.

² For French developments see Géný, F., *Science et technique en droit privé positif* (Paris 1923-24).

developed in its purest form. All the necessary rules for the solution of every point of conflict were to be derived by logical deduction from the fundamental principles of the rational system of law.¹

German legal science entered a critical stage toward the end of the eighteenth century. The systems and textbooks of natural law, developed in the course of time, were viewed as unquestioned authorities. There was no criticism because they were rational and logical. There also was no gauge whereby to measure their practical utility. This stagnation was overcome by Friedrich Karl von Savigny (1779-1861).² Savigny's famous controversial work of 1814, *Vom Beruf unserer Zeit zu Rechtssprechung und Rechtswissenschaft*, was directed primarily against a plan, inspired by the national currents of the War of Liberation, to undertake the composition of a new German legislative code. Rationalism had taken lightly the task of creating laws. Legislators actually believed that they had created a new and eternally usable reasonable law.³ Savigny's rejection of such codifications was based on the conviction that rationalist legal thinking was incapable of forming permanent legal rules. He recognized the blindness of the positivist natural law. He called for studies in legal history in order to find "a firm standpoint from which the validity and utility of the hundreds of the recommended individual legal suggestions could be judged."⁴ His historical position is significant as the first recognition of the sociological interconnection of all law. In terms derived from the romantic movement of his time, he proclaimed the thesis that law is derived from the *Volksgeist*. This may sound mystical and it has been interpreted as such for the most part. Actually, however, what Savigny desired to say was that law does not consist of general rational rules valid for all peoples and all times but that "it is grounded in the spiritual and cultural existence of a people," that it takes on the language and customs of the community in which it

¹ Cf. Stintzing and Landsberg, *op. cit.*, pt. i, p. 478 ff., pt. iii, pp. 1, 435 ff.

² Cf. Manigk, Carl, *Savigny und der Modernismus im Recht* (Berlin 1914).

³ Cf. the introduction to the Prussian *Allgemeine Landrecht* of 1791, § 50.

⁴ Cf. Manigk, *op. cit.*, p. 47.

is created and that it is dependent on a process of long historical transformation,¹

Based on this theory subsequent historical investigation undertook the task of establishing this dependence of law upon social conditions. It traced the development of legal rules and presented its gradual transformation. With one stroke it brushed aside the age-old labors of comment and adaptation of the pandect law. What remained was a "System of Roman Law," an abstraction of concepts out of the materials of the Roman law and its Italian canonic and German additions. Thus fundamentally the same work was repeated which the Glossators had undertaken six hundred years before. This time, however, it was on the basis of a greater store of experience, with a critical historical approach and with the technique of analytical thinking of a later time. Again the sharply defined sentences of Roman law were related to each other and yielded simple and distinct "legal institutes." Legal concepts like sales, leases, *societas* and association, inheritance and legacy, were clearly distinguished and differentiated. By setting up new principles and concepts Savigny's historical jurisprudence made room for new deductions of workable laws for a new age. Just as the Commentators in the fourteenth century had carried out the testament of the Glossators, so in the nineteenth century a new school of practical jurists supplemented the work of historical jurisprudence. Their motto, often quoted, was "to go through the Roman law beyond the Roman law." Led by such world famous jurists as Windscheid, Dernburg and Jhering, they set up a system of modern legal rules which sought to harmonize the facts of social life with Roman juristic concepts. The courts worked hand in hand with science in this process. Windscheid's *Pandekten Kommentar* is marked by the same kind of thinking as the decisions of the highest courts, the Prussian *Ober-Tribunal* and, since 1877, the *Reichsgericht*. Conceptual constructions and deductions from the prin-

¹ Cf. Savigny, *op. cit.*, p. 7, and Manigk, *op. cit.*, p. 69. Views as to Savigny's significance for German law vary greatly. Savigny's role is treated in a very negative fashion by Hermann Kantorowicz in his pamphlet *Was ist Uns Savigny?*

ciples of Roman law are the arguments upon which the decisions were based. The decision made no effort to reply to the question as to whether or not the solution is practicable or desirable. That would have been "legal politics," which was to be carefully distinguished from deductive "scientific" legal reasoning. The results of such deductions were usually, nevertheless, very useful. By means of deductions and constructions they created a liberal-economic and individualistic law for the rising new empire and the increasingly significant bourgeoisie.¹ The crowning work of this school was the German *Bürgerliches Gesetzbuch* of 1896. It was drafted in 1874-95 by two government commissions in which the legal scholars were predominant.

In the meantime, however, there were enormous advances in general social and economic life. The legal structure now became antiquated very much more rapidly than in earlier times. The German Empire developed into an industrial and exporting country and its economic system entered upon the stage of high capitalism. Production and commerce, faced with increasing competition and decreasing opportunities for profits, found a greater need for providing a secure basis for their calculations. Their demands for legal developments increased. The traditional logical construction of a type of contract could no longer be decisive. The judge was to recognize what the expected attitude in economic life was and he was not to prove disappointing to these expectations. The formalistic decisions of the jurisprudence of conceptions which did not keep pace with economic developments were attacked as "alien to life." The same economic developments had also destroyed the unity of social life. The interests of the working classes, and later those of the middle classes, stood in opposition to those of the entrepreneurs. Industry and agriculture worked in opposing directions. With the growing power of socialist parties and the awakening of social conscience there was less possibility for overlooking

¹ The most comprehensive presentation and criticism of the jurisprudence of conceptions is found in Ehrlich, E., *Die juristische Logik* (Tübingen 1818). See also Weber, M., *op. cit.*, p. 396.

class differences. The dominant juristic tendencies were attacked also from these sides. The outspoken spirit of economic individualism in the pandect doctrines and the *Bürgerliches Gesetzbuch* were clearly exposed.¹ Charges were made against the judges that, under the cloak of the deductive foundations of their decisions, they either consciously or unconsciously protected the ruling powers and stood in the way of social reform. At the same time considerable advances were made in the history of law and in sociological research. Legal systems hitherto unknown were now opened up for investigation. It was now fully recognized that the constant changes in social life always create new laws and that law cannot dispense with the consideration of general social conditions. Jurisprudence of conceptions, as the deductive school now was called, itself bore within it the seeds of this idea. Windscheid and his colleagues consciously had developed a law for their times from the Roman law. Their doctrine that this new law was already implicit in the fundamental concepts of Roman law and was merely to be deduced from these was obviously a fiction. Thus when the times again began to change, one of the chief architects of the pandect system, Rudolf von Jhering, arrived at the view that the origins of law are to be found not in concepts nor in the *Volksgeist* but rather in the purpose pursued by the lawmaker.² In this way the final blow was administered to the jurisprudence of conceptions. Jhering believed as before that the judge was to provide a deductive foundation for his decision but he demanded that lawmakers and legal science be conscious of their purpose when new legal rules are set up. The further step toward the development of a new method of case decision, oriented around existing conditions, was bound to follow.

The free law movement which began in the first decade of the

¹ Menger, A., *Das bürgerliche Recht und die gesetzenden Volksklassen*, 5th ed. (Tübingen 1927).

² Jhering, R. von, *Der Geist des römischen Rechts*, 6th ed. (Leipzig 1906-1923), vol. 2, p. 2, and *Der Zweck im Recht*, 2nd ed. (Leipzig 1884), English translation of vol. 1 as *The Law as a Means to an End* (Boston 1913). Cf. Lange, *Die Wandlungen Rudolf von Jherings in seiner Auffassung vom Recht* (1927).

present century spread widely the criticism of the limitations of the ruling methods in jurisprudence. Slogans such as "formal jurisprudence," "pandectology," "judicial slot machines" became common. Legal science and lawmaking were charged with having failed to pay heed to the needs of the times. They pointed to the English "justice-king" and demanded, at least in the radical inception of the movement, that the judge be given a free hand to adjust the law to the dominant needs of the time.¹ These polemics rightly condemned the one-sided positivist-deductive character of the jurisprudence of conceptions and of the BGB. By their radical departure from all speculative thinking, however, they aroused at the same time the strongest opposition not only on the part of the socially reactionary circles but also on the part of those who believed that the "scientific" character of law and its scholastic intellectual tradition were not to be disturbed.

The actual development proceeded more slowly. At first came the doctrine of jurisprudence of interests,² which set up basic principles for the interpretation of the BGB from a conscious and logical continuation of the ideas of Jhering.³ The idea of these theorists was that since the legal rule was but a means for achieving a particular *end*, it should be applied only up to the point that the end which the author of the rule had in mind is actually achieved. Their

¹ The leaders in this battle were above all Gnaeus Flavius (Hermann Kantorowicz), who "provided the movement with the necessary slogans and a sort of program" in his *Der Kampf um die Rechtswissenschaft* (Heidelberg 1906), and Ernst Fuchs, who attacked in propagandistic fashion the "un-German pandect law" in his *Was will die Frei-Rechtsschule?* (Rudolstadt 1929). Kantorowicz has since declared it to be "bad methodology and unfair" to cite his early work as his opinion today. See his *Tat und Schuld* (Zurich 1933) p. 26. For Kantorowicz's later views see *Rechtswissenschaft und Soziologie* (Tübingen 1911).

² Cf. Heck, Philipp, *Die Probleme der Rechtsgewinnung* (Tübingen 1912), "Gesetzes-Auslegung und Interessen-Jurisprudenz" in *Archiv für die Zivil. Praxis*, vol. 112 (1914) p. 11 ff., and *Begriffs-Bildung und Interessen-Jurisprudenz* (Tübingen 1932); Rümelin, Max, *Erlebte Wandlungen in Wissenschaft und Lehre* (Tübingen 1932). Together with Heck and Rümelin, the private law theorists, Müller-Erbach, Stoll, Ullmer and Locher are important as adherents of the jurisprudence of interests. The fundamental investigations are those of Heck and the following discussion is based on his work.

³ Cf. Heck, *Begriffs-Bildung und Interessen-Jurisprudenz*, p. 32 ff.

chief concern was the determination of the gaps within the law for which the lawgiver had not set up any rules and for which there are as yet no immediate legal provisions.

Wherever such gaps were established, the jurisprudence of interest demanded a conscious development of new law and the rejection of any method of mechanical derivation of gap filling rules from principles and concepts. But the courts nevertheless had to remain in accord with the general aims of the existing body of law. Out of the existing law, the codes and statutes, the judge could develop the general position of the lawmaker in respect to those particular interests which appear in the new conflict for the solution of which no directly applicable rule existed. Other provisions could be found in which the lawmaker will have expressed his view concerning the greater significance of one interest, or the relative or absolute valuelessness of another interest. The new solution must be in harmony with the value judgments contained in other provisions of the law. In this way another hierarchy of concepts and system is created. At the summit of the system stand certain evaluations which are fundamental to all the valid laws: a definite attitude toward private property and toward freedom of industry and contract, a certain measure of protection for freedom and initiative, a definite evaluation of the family institution and a definite limitation of the freedom of inheritance. Subordinate to these principles and proceeding from the general to the particular and from the simpler to the complex, are the evaluations of conflicts of interests which are known to the lawmaker. The system, therefore, no longer consists of concepts but of social relationships. In other words, it is a system of types of situations of interests¹ which are valid only where the essential marks of the type occur again. It is not the blind logical deduction but the practical aspect of life which is now decisive for the abstraction. The value judgments that really move the court to set up the new rule, and not ambivalent syllogisms, must serve as a justification for the new rule. A decision, for example, involving some new problem in the law of corporations will not be made on

¹ Heck himself never uses the word "type."

the basis of a rule derived from the conceptual nature of a corporation. The question now is what interests of investors, creditors or the common good in general are involved in the new case and how the law has generally evaluated these interests in other parts of the corporation law.

This represents great progress. Although legal dogmatism has preserved its clear technique of thinking, nevertheless the blindness to life and the irresponsibility of logical reasoning have been set aside. It is true that in this way only one part of the complaints against the old legal thought has been removed. Law is still as before positivistic. Jurists do attempt to determine how life has developed beyond the law and how far existing rules have become inapplicable but they refuse to derive any new ideas from the new ways of life and their implications. This character of the jurisprudence of interests was bound to be destroyed as soon as the relatively stable prewar period was followed by more dynamic conditions. The store of older ideas available for the filling of gaps could no longer be of service everywhere. Neither was it expected that the lawmaking machine could begin to work immediately upon these new problems and rapidly accomplish good work. The one-sided character of the jurisprudence of interests had already been sharply emphasized by several sociologically minded investigations of the "living law" or of "the realities of law."¹ The most far-reaching incongruities between law and life had been revealed. The provisions in the legal codes for the regulation of labor law, of mortgages, of many aspects of commercial law obviously had the social conditions of past generations in view. Entire sections of the law of inheritance were devoted to a consideration of antiquated controversies of the pandect law while wholly new currents had come into being. Finally the war and postwar periods brought with them tremendous changes in the increased power of the working classes, in the movement toward concentration of capital, in changes

¹ Ehrlich, E., "Die Erforschung des lebenden Rechts," in *Schmollers Jahrbuch*, vol. 35 (1911) p. 129, and Nussbaum, A., *Die Rechtstatsachen Forschung* (Tübingen 1914).

in business structure, in the organization of cartels of production and above all, in the depreciation of money whereby the entire credit structure was brought into a state of flux. Legal science was not merely content to establish the fact that the conflicts of interests had changed. It also proposed new solutions. From all sides the new currents in life streamed into the "system of existing law." More and more courts and textwriters began to see new valuations and to express independent opinions on new conflicts of interest.

The important fact, however, is that this new law in no way led to a dissolution of the old system. "Scientific method" reigned supreme as before. Every new decision was immediately incorporated into the conceptual system of the existing law. Investigation was made as to whether the basic propositions underlying the evaluation of interests were in line with the hitherto recognized evaluations. If the new elements did not fit into the existing system they were either set aside or inquiry was made as to the continued validity of the older principles. The consequences of the decision were deduced as far as possible and there was either piecemeal reconstruction of the entire system or the conclusions of the judge were rejected as too bold and as going beyond his competence. This entire critical work has been achieved by means of the large, sensitive and quickly responsive apparatus of German legal science. The decisions of the higher courts are expounded and reviewed in this light in the literature, periodicals and commentaries. The decision which is approved must not only be useful for the specific case or the type of conflict. It must also pass the muster of criticism as to its principles. If the writers reject the results of the decision and its practical consequences for conflicts of a similar type or its conceptual consequences for the system, then the court might use a later decision for revising its opinion. It may also happen that the court might adhere to its original view. In such a case legal science will be forced to make the necessary adjustment in its system.¹

¹ This presentation again is largely a simplification of actual relations. As I have already remarked the continental and particularly the German jurists are not wholly unaware of the pragmatic and case law methods of legal development. The

Today all the leading scientific law books, monographs and commentaries work in this sense in all fields of law. Works like Düringer and Hachenburg's *Kommentar zum H.G.B.* or Jaeger's *Kommentar zur Konkurs-Ordnung* are not only interpretations of the text of the law but are critical, systematic presentations of the living law alongside the decisions of the courts. In a survey of the last decades down to 1932 the development seems to have finally progressed along the lines of removing to a large extent rigidity and positivism from systematic thought. Living experience, recognition of social conditions and practical needs no longer appear as contradictory to orderly thinking and to the aspiration for intellectual mastery of the material. They now complement and enrich each other. Practice always demands a continuous adaptation of norms to the changes in life and repeated revision of parts of the system. But at the same time the continued literary surveillance and criticism by legal science over court decisions makes necessary in every case a consideration of the principal value judgments underlying the law.¹

recognition of changes in social structure, which presupposes the discovery of gaps and which induces consciously made new law, very seldom comes about at one stroke. It is often a gradual process which reveals the new elements and which makes possible the liberation from outworn legal rules. Even with the keenest observation and with long criticism it often happens that essential changes are not comprehended and are forced into norms which were not created for them. In such cases the same technique which a case lawyer uses might be applied. The variations in meaning of the verbal formula will be utilized and artificial exceptions created. Under such pressure of social necessity certain arbitrary elements and contradictions will find their way into the system. This will be temporary, indeed, only until it comes to be recognized that a new idea has been sailing under a false flag. It might then become evident that without being aware of it certain far-reaching changes in the system had been effected which there was not sufficient courage to bring about consciously. A famous example of such a case is the present day German law of *Sicherungs-Übereignung*, i.e., the introduction of a chattel mortgage into the German law by use of rules relating to the transfer of property brought about by actual circumstances and against the will of the authors of the BGB. Cf. Hoeniger, H., *Die Sicherungs-Übereignung von Warenlagern*, 2nd ed. (1912).

¹ It is not possible to review the most recent developments in Germany. It seems clear that in certain relations there is an apparent turning away from the scientific traditions. This development goes back to the inflation period. At that time, in 1923, the question as to whether the old gold mark debts could be paid for in the ridiculously depreciated paper money involved a danger to the entire judicial

system. According to the law paper money was legal tender. If the courts were to follow this law they would ruin the entire middle class and enrich the loan and mortgage debtors. The lawmaking power did not intervene because it desired to wait for the end of inflation and also because the middle class groups did not have enough power in parliament. The *Reichsgericht* at that time, on the strength of the rules of equity underlying the laws of contracts (§ 242 *Bürgerliches Gesetzbuch*), disregarded the old law. It set up the new rule that an equitable monetary adjustment was to be made between every creditor and debtor according to their personal relations. This brought about a "tumultuous" condition. The "individual revaluation" had the consequence that "for every conceivable detail" in the relationship of the parties there was always a precedent to be found which could be used as authority. The *Reichsgericht* made possible an "enormous cult of precedent" and abandoned the "juristic method" (Nussbaum, Arthur, *Die Bilanz der Aufwertungsrecht*, Berlin 1929, pp. 12, 16, 19). It indulged in "pseudo-jurisprudence" (Bruns, V., in *Das Recht*, vol. 27, 1923, p. 138 ff.; see also Heck, P., in *Archiv für zivilistische Praxis*, N.F. vol. 2, p. 203 ff.). In other words, in the field of revaluation law the *Reichsgericht* abandoned the principle that types of interest-situations are to be judged rather than individual cases. In that way all systematic thinking was rendered impossible and a pure system of case law was originated. There were no norms that proclaimed generally valid principles. The courts, which did not agree with the lawmaking bodies in many political questions, such as in respect to the treatment of the middle classes (Cf. Dessauer, *Recht, Richtertum und Ministerial-Bürokratie*, 1928), made use of many considerations and observations concerning the peculiarities of each case in order to arrive at desired decisions. The danger was recognized. Hedemann, in his *Die Flucht in die General-Klausel* (Tübingen 1933), called attention to the spread of the equity decisions and warned against the decline of "scientific law." Just then the National Socialist Party assumed power. The National Socialists wanted to make use of the equity in each case to bring to the fore the National Socialist doctrines "without the need of altering a single positive law." (Schmitt, Carl, *Über die drei Arten des rechtswissenschaftlichen Denkens*, Hamburg 1933.) Equity was declared to be the "cuckoo's egg" in the liberal system of law (Lange, H., *Liberalismus, Naturgesetz und bürgerliches Recht*, Tübingen 1933). The new ideas of National Socialism were not to create immediately new norms and legal principles. That would have meant a revolutionary overturn of the "liberal legal system" which so far was beyond the powers and possibilities of the National Socialists. Instead they conceived of a gradual dissolution from below of the existing system of values. The same idea, among others, is present in the movement for a reform of the existing "Roman" law in favor of the more "national" Germanic law. (Cf. the addresses delivered at the National Socialist Parteitag, 1933, by Commissar of Justice Frank, *Juristische Wochenschrift* 1933, p. 1091). The *Reichsgericht* is indeed not in favor of giving up the scientific tradition and the legal writers and university professors are continuing to operate by the old methods. Even a member of the National Socialist Academy of German Law who made an investigation into the possibilities of using English legal methods in Germany has definitely advised the retention of the continental tradition. (Cf. De Boor, H., *Die Methode des englischen Rechts und die deutsche Rechtsreform*, Berlin 1934).

INTERNATIONAL COMPARISON OF EDUCATIONAL EXPENDITURES

AMONG those countries which are included in an international comparison published by the German Statistical Office¹ the United States spent for educational purposes the highest amount, both absolutely and relatively (in relation to the number of the population as well as to the number of pupils). In dollars (calculated on the exchange parity) educational costs per capita of population in 1930 were as follows:

	<i>For elementary and high schools</i>	<i>For colleges and universities</i>	<i>Total</i>
Germany	6.45	0.81	7.26
Great Britain	8.52	0.52	9.04
United States	18.86	4.62	23.48

According to estimates of the same source, educational expenditures require in Italy not more than at most 8 or 9 per cent, in Great Britain and France 14 per cent, in Germany 16 per cent and in the United States 37 per cent of all expenditures of central and local governments, excluding expenditures for army, war liquidation and debt service.

The number of pupils per 1000 of the population is as follows:

	<i>Elementary schools</i>	<i>High schools</i>	<i>Colleges and universities</i>
Germany	117.5	15.7	2.1
France	88.2	6.8	1.9
Great Britain	124.5	10.7	0.9
Italy	110.0	3.5	1.2
United States	173.3	35.8	7.9

These figures show not only that the United States is first in the number of students in relation to the population, but also that the percentage of high school and college students among all students is much higher in the United States than in the other countries.

GERHARD COLM

¹ *Vierteljahrshefte zur Statistik des Deutschen Reichs*, vol. 43 (1934), pt. iv. In general the statistics seem to exclude private expenses for educational purposes, except in the case of American universities.

RECENT LITERATURE ON PLANNING

BUREAU D'ÉTUDES SOCIALES. *L'Exécution du Plan du Travail*. Antwerp: Éditions "De Sikkel." 1935. 443 pp. 27 fr.

BURN, BRUNO. *Codes, Cartels, National Planning. The Road to Economic Stability*. [In collaboration with S. Flink.] New York: McGraw-Hill. 1934. 413 pp. \$4.

DUNCAN, W. G. K., ed. *National Economic Planning*. [Papers read before the Second Summer School of the Australian Institute of Political Science.] Sydney: Angus & Robertson. 1934. 217 pp. 5s.

International Trade Union Movement, vol. 15, nos. 1-4 (January-April 1935), "Economic Planning and Labour Plans."

NATIONAL PLANNING BOARD. *Final Report, 1933-34*. Washington: U. S. Government Printing Office. 1934.

Review of Economic Studies, vol. 2, nos. 1 and 2, articles by H. G. Dickinson, A. P. Lerner and Maurice Dobb.

SMITH, JAMES GERALD. *Economic Planning and the Tariff*. Princeton: Princeton University Press. 1934. 831 pp. \$3.

VAN KLEECK, MARY, and FLEDDÉRUS, MARY L., eds. *On Economic Planning*. [Papers delivered at the Regional Study Conference of the International Industrial Relations Institute, New York, 1934.] New York: Covici-Friede. 1935. 275 pp. \$3.

WOOTTON, BARBARA. *Plan or No Plan*. New York: Farrar & Rinehart. 1935. 360 pp. \$1.60.

Zeitschrift für Sozialforschung, vol. 3, no. 2 (1934), article by Kurt Mandelbaum and Gerhard Meyer.

Up to 1933 the literature on planning represented the first approach to a preparatory exposition of the basic problems. This was especially true in Anglo-Saxon countries. It is very characteristic of this period that the most valuable contributions were essays in symposiums, such as Charles A. Beard's article in *America Faces the Future*, or papers delivered at meetings, like Lewis L. Lorwin's at the Amsterdam Congress for World Social Economic Planning. Many scholars felt that the results of research and consideration were not yet sufficient to fill books.

This phase is now passing. The book by Barbara Wootton, *Plan or No Plan*, indicates the advance which has been accomplished. Nevertheless the book is of an expository type, though it leads us farther

than any previous attempt. It shows the problems which must be solved by every economic organization, and it makes an elaborate comparison of the solutions which a planned and an unplanned economy have to offer. To Barbara Wootton planning is not, or is not primarily, an establishment of new goals. It is another and better method of solving the fundamental tasks of all economic endeavor which must be recognized by the leaders of every economic society, however constituted, if that society is to attain any economic optimum however defined. From this point of departure the author discusses the role of a reckoning system as the steering machinery in a planned economy, and analyzes in detail the devices which the leaders of a planned economy could apply in dealing with problems like the choice of vocation, or the danger of unemployment. Though the organizational set-up for planning which she devises is of a more centralizing character than the proposals of the German *Marktsozialisten* (whom she apparently does not know), she has much in common, both in method and opinions, with that German group. Some passages would have gained greatly if the author had had an opportunity to use, for example, Eduard Heimann's article, "Planning and the Market System," in the November 1934 issue of this magazine. The weak spot in her analysis of the possibilities of an unplanned order is her rather uncritical endorsement of the proposals of moderate inflationists. But the specific answers she gives are far less important than the completeness of the survey of problems. In this respect Barbara Wootton's book is unexcelled. Since it overcomes a maximum of difficult problems with a minimum of complex language and arguments, one may forecast for the book an outstanding role in economic education.

For a considerable time the problem of reckoning in a planned economy has been the center of scholarly argument between socialists and non-socialists. Following Max Weber and Mises many adversaries of socialism or economic planning have argued that only the capitalistic economy has a means for evaluating success and sacrifice in terms of figures, making it possible to decide reasonably and accurately how much every type of production should be expanded. Recently the discussion has become a three-cornered fight: while *laissez-faire* economists affirm that no reckoning is possible outside a market economy, socialists believe that in a planned economy reckoning can be done with still closer approach to correctness than under capitalism, and communists maintain that socialist reckoning is so fundamentally different from capitalist reckoning that no common measure can be found to compare their efficiency. A discussion in the *Economic*

Journal (1933), continued in the *Review of Economic Studies* (vol. 2, nos. 1 and 2), in which H. G. Dickinson and A. P. Lerner stood for the socialist proposition and Maurice Dobb defended the communist standpoint, has greatly contributed to the elucidation of that key problem of total economic planning. Coincidentally, in the preceding and in the same volume of the *Review*, Oskar Lange developed arguments (under the title, "The Determinateness of the Utility Function") which seem to safeguard against mathematical objections the method of evaluation suggested by Lerner. If this method were fundamentally wrong, efforts like those of Mrs. Wootton would be futile, since they are based upon an investigation of the relative efficiency of a planned as compared with an unplanned order. The communist thesis that capitalistic and socialistic economic reckoning are fundamentally different implies that the efficiencies of socialistic and capitalistic economies cannot be measured by the same yardstick. If this position is tenable we cannot condemn capitalism because it is not so efficient as we hope planning will be, nor can we utilize the achievements of previous theorists, including Marx, in the analysis of capitalism to demonstrate how a planned order must be devised to succeed where capitalism fails. The reviewer does not want to conceal his opinion that we are not facing such a bankruptcy of economic science, and that this has been clearly demonstrated by the superiority of the Dickinson-Lerner arguments in the discussion with Dobb, who is certainly the most competent proponent of the opposite view.

The differences in the fundamental approach to the problem of planning have been surveyed and excellently analyzed by Kurt Mandelbaum and Gerhard Meyer in the *Zeitschrift für Sozialforschung* (vol. 3, 1934, no. 2), the former publication of the Institute for Social Research at Frankfurt University, now appearing in Paris. The article is the best guide to the literature on planning up to 1934, and it is highly desirable that we may soon see a continuation. The standpoint of the authors, which they explain very briefly, seems to coincide with that of Barbara Wootton.

A good deal of work in the advancement of thought about planning has been done in recent years by trade unions and socialist parties through their advisory bodies. The official publication of the International Federation of Trade Unions, *International Trade Union Movement* (nos. 1-4, 1935), has recently devoted a special issue, "Economic Planning and Labour Plans," to a compilation of these programs. It begins with a program of the IFTU itself, the spirit of which is expressed in these sentences:

The power of disposing of the means of production must be transferred to the community and the various sections of a planned economic system must be fitted harmoniously in one with another. This objective can be pursued even within the framework of the present capitalistic economic system, and, if we are to avoid more terrible upheavals it must be done on the basis of the present economic system.

The further details of the program show clearly that though the change is to begin within the capitalistic order, it is intended to lead beyond the existing system. Naturally the other programs show some shades of difference, depending on the more "radical" or more "conservative" character of the respective national labor movements, but on the whole the similarities predominate. All the schemes provide for a stricter state control or complete nationalization of credit and for nationalization of key industries. On the other hand, a full production plan is nowhere clearly envisaged. One cannot expect completely original ideas to be developed for acceptance by large bodies which cannot afford the intellectual adventures to which an individual scholar or even a statesman may commit himself. On the other hand it is almost inevitable that some pet ideas of leaders or advisers of leaders gain an unduly large space in programs of this kind. All the programs, however, have avoided both the danger of the commonplace and the danger of the crank idea as far as it is possible in political practice.

By far the most elaborate of all socialist programs is that of the Belgian socialist party (*Parti Ouvrière de Belgique*). A national convention of the party outlined a series of changes which it believed to be immediately possible and desirable (*Plan du Travail*), and decided that the party would not support any government which was not ready to consider this plan the basis of its policy, while the party would cooperate with all groups, socialist or non-socialist, which were willing to put the plan into operation. A committee was appointed to work out the details, and under the leadership of Henri deMan, aided by a number of subcommittees, worked out a scheme for the execution of the plan, which has been published in a volume of considerable size.

The high lights of the report are the nationalization of the large banks and of the basic industries. The rest of economic life is to be supervised but not nationalized. It is very understandable that a socialist party which is working out a minimum program for cooperation

with bourgeois parties must be very cautious not to establish requirements which nonsocialists cannot accept, and it is further clear that the problem of nationalization is a danger spot. But while the leaders and advisers of the party had to restrict their demands in this respect for tactical reasons, and could do so without seriously damaging the chances of technical success, there is no good reason why they refrained from making a proposal for planning production directly instead of steering it through the credit mechanism. The full importance of that aspect becomes much more obvious in the case of such an elaborate plan as the Belgian one, which is in many respects an excellent piece of work, than it is in the case of the shorter and less thoroughly organized programs of other laboring class bodies. The idea of a plan embracing the whole of economic life could have been reconciled with the maintenance of private management in economic spheres other than big business, and shaped so as to increase rather than decrease the appeal of the program to the middle classes.

Obviously the authors of the Belgian program, like many other socialists, were too confident that credit is the steering wheel of economic life with which one can guide the economy in a planful way. With Barbara Wootton the overestimation of credit policy is not very harmful. She has at least recognized that credit planning is no substitute for production planning. Elsewhere this mistake obstructs the way to a full realization of what planning ought to be.

Modern economic planning has started from planning for the better utilization of physical resources, including soil for agricultural and housing purposes, and today most of what is called planning in public life is still of that type. The *Final Report* of the National Planning Board (Federal Emergency Administration of Public Works) gives an excellent survey of physical planning in this and other countries. But it gives still more. It shows clearly the transition from physical to economic planning—from planning for one well-defined purpose to a kind of planning that has to envisage numerous conflicting purposes. The members of the board, Wesley C. Mitchell, Frederic A. Delano and Charles E. Merriam, discuss the theoretical aspects of their task in a very elucidating way in the chapter, "A Plan for Planning." Lewis L. Lorwin and A. F. Hinrichs also include some interesting theoretical viewpoints in their digest, "National Planning," which is annexed to the report. The conclusion which the reader reaches from the whole presentation is that physical and all other types of partial planning will by necessity have to develop into total national planning if they are not to encounter failure.

The symposium, *On Economic Planning*, edited by Mary L. Fledérus and Mary Van Kleeck, is also a survey of partial planning with some attempt to show its relation to the more fundamental problems. Unfortunately Alfons Goldschmidt, who has undertaken the most important task in this respect, has not solved it in a satisfactory way. His article, "Theories and Types of Planning: Utopian, Fascist, Soviet," puzzles the reader by surprising formulæ, but does not further his insight. Also the report by Ossinsky about the Second Five Year Plan in action is disappointing on the whole, though interesting in details; it does not reveal the basic methods of calculation and accounting, the relations between the monetary figures and the physical quantities of the plan, the ways of deciding what needs are to be satisfied. These specifically economic questions are most interesting for the western economist who is over-fed with technological detail from the Soviet Union.

The Australian Institute of Political Science held a convention on economic planning in January 1934 at Canberra and has published in a well organized volume the reports and speeches delivered at that meeting. This symposium deserves special attention because it comes from a country which has to an extraordinary extent experienced strong governmental interference with business life. The speakers differ widely in their approach and opinions, though most of them have a positive attitude toward planning. The most outstanding feature of the whole book is the opposition to state actions which are not based upon a total concept of economic life and therefore are undertaken without full realization of the complexity of their effects. Planning is intended to be not only a remedy for the shortcomings of what still exists of a pure market economy, but still more an integration of state policies which are now *dissecta membra* and can become a system only through a plan. It is with this idea in mind, for example, that Dr. E. R. Walker of the University of Sydney recommends national planning particularly for countries which have fallen into the errors of protectionism:

The case for free trade . . . had always been a complicated one, and one difficult to expound. But under a perfectly planned economy the advantages to be gained from trade would be clear and visible. Everyone would see that the advantage Australia gets from her international trade was not that she got rid of so much wheat and wool, but that she obtained certain goods which can be less easily produced here. We should see this clearly under a

planned economy, and we should go in for as much international trade as would benefit our whole economy.

This Australian symposium should be read especially by those who still believe that economic planning means nothing but a new name for protectionism or economic favoritism in general. Whether or not planning, contrary to the intentions of those who advocate it, will lead to special privileges at the expense of society at large, may still be worthy of discussion. But simply to imply that the so-called planners have not read or have not understood the teachings of the classical school and therefore are naive mercantilists cannot lead to a proposition that can be taken seriously. Nevertheless this attitude exists, as exemplified in the book *Economic Planning and the Tariff, an Essay on Social Philosophy*, by James Gerald Smith. The author makes some useful observations which strengthen the case against protectionism and monopoly, and he is right in his idea that to fight both one must start from a broad concept of social life. Thus he starts an analysis of the fundamental incentives and ideas which are behind the modern policies of granting privileges to special interests. But neither does he have an unbiased view of the position of his adversaries, nor does he possess the power as a thinker and writer to master his own ideas and to bridge the gap between basic philosophy and details of practical policy concerning customs duties, anti-trust legislation and price stabilization. The result is a bewildering mixture of philosophical statements and reports about and criticisms of the handling of this or that issue by this or that government.

The bias of Mr. Smith and other laissez faire economists with a similar outlook becomes somewhat more understandable if one reads the book by Bruno Burn, *Codes, Cartels, National Planning—The Road to Economic Stability*. Mr. Burn is a German and has been an organizer and manager of cartels for many years. He gives very useful material about the technique of cartel management, and what he says about the American codes as compared with German cartels is also interesting. But he is one of those "planners" who identify planning with deliberate protection of special interests and who imply that by spreading privileges the government will further public welfare. His book is of great interest to the expert, but is misleading to everyone who is not a trained economist.

There is one field of economic planning which until now has been unduly neglected: international economic planning. Is it possible for countries not having a planned system for their domestic life to or-

ganize their mutual economic relations by agreement? The United States government has by inference called attention to this question in its memorandum submitted to the International Institute of Agriculture in October 1934. The memorandum deals chiefly with the problems of tariffs and other trade barriers and with restrictive agreements for the production or export of particular commodities, like sugar, wheat, rubber and tea. But it continues:

Long-time planning is a means of avoiding in the future such maladjustments as have arisen in recent years. . . . The connection between agricultural planning and economic planning in other fields is important as is also the question of how far such planning is possible under the conditions of economic policies of the various countries existing at the present time. The possibility of adopting such measures depends largely on (1) whether nations are willing to sacrifice certain domestic interests or demand nationalistic economic policies, and (2) the extent to which governments will continue to assume control over economic activity in general.

These brief observations are only interesting because they refer to an otherwise neglected field. Strongly imaginative people may combine them with some discussions that followed the establishment of the Bank for International Settlements, with some hopes that came into the open at the unfortunate World Economic Conference of 1933, and with suggestions of writers like H. G. Wells or H. N. Brailsford, and visualize the coming of an international plan for economic development. There is one great reality behind such imagination. If the great western powers were to draft and execute such a plan they would coincidentally establish peace and their own control over the larger part of the world. For this reason the conception of an international plan for economic progress may be a permissible play of fantasy even for an economist.

CARL LANDAUER

BOOK REVIEWS

EPSTEIN, RALPH C. *Industrial Profits in the United States*. New York: National Bureau of Economic Research. 1934. 672 pp. \$5.

PATON, W. A. *Corporate Profits as shown by Audit Reports*. New York: National Bureau of Economic Research. 1935. 151 pp. \$1.50.

Both of these publications of the National Bureau of Economic Research contribute interesting material to the statistics of profits. Epstein's voluminous work analyzes the data compiled by him in collaboration with Miss Florence M. Clark for the Department of Commerce and published in 1932 under the title *Source-Book for the Study of Industrial Profits*. It deals primarily with the net earnings for the years 1919-28 of 3144 concerns, most of them fairly large and very large corporations. Nearly two thirds of them are manufacturing companies, the rest are in trade, mining and finance. Public utility and service enterprises are not represented. For 71 very large companies data are available through 1931. This material is supplemented by a compilation for 1919-28 of data for about 1500 smaller non-identical corporations reporting net profits.

Unlike the income tax statistics the figures on profit analyzed in this book include also tax-exempt income. Nor is the federal income tax deducted from net profit. Net earnings are related in most cases to the stockholders' equity (or capitalization), less frequently to total capital, including funded debt. Epstein maintains that the major conclusions are not affected by the inclusion of taxes with profits or by the elimination of funded debt from the profit base.

Average profit rates are calculated for several major industrial divisions and numerous minor groups for each year in the period 1919-28 (or 1922-28) as well as for the period as a whole. This is followed by a presentation of frequency distributions of profit rates for all major and minor groups. Epstein also analyzes the influence of the size of the company and its geographical location on profits as well as the relation between variation in sales and changes in the profit rate. The tendency of profits to an equality is submitted to a particularly thorough empirical test.

The most important findings are as follows. Average annual earnings in 1919-28 of the 3144 companies represented a return of 9.2 per cent after taxes (10.5 per cent before taxes) on their capitalization. The highest average return—12.8 per cent—was earned in 1919, the lowest—2.4 per cent—in 1921. In 1922-28 the average return fluctuated

within a narrow range. The least profitable industry over the ten-year period was meat packing, with an average return of 1.9 per cent, the most profitable was toilet preparations, with 31.6 per cent. There is no clear tendency for the profit rate of an industry to approach in the course of years the average for the sample; the dispersion of profit rates about the central value extends over a wide range. Smaller companies are more profitable than large; the highest rates of profit appear to be earned by companies with a capitalization of \$250,000 to \$500,000. Consumers' goods industries enjoy higher and steadier earnings than producers' goods industries, with industries manufacturing durable consumers' goods making the best showing.

During business recessions a marked correlation is observed between the decline in sales and the drop in profits; but when the trend is upward no correlation is found between changes in sales and in earnings. It is interesting, however, that industries with the most drastic decline in profits experience also the greatest gain in a business revival.

Epstein examines in some detail the questions whether his sample of corporations is representative, whether undervaluation or overvaluation of assets is likely to impair the conclusions, whether difficulties are likely to result from the allocation of particular firms to certain industry groups. In his opinion the essential conclusions are not affected by admitted deficiencies in the underlying material.

Wesley C. Mitchell's Preliminary Note on the Problem of Measuring Profits presents in lucid and well considered language the difficulties involved in the statistics of profits and places Epstein's work and his conclusions in the main stream of economic research. The value of the Note and of some chapters in the book is enhanced by wise and expert comments by Colonel M. C. Rorty and Oswald C. Knauth, directors of the National Bureau.

Epstein's book undoubtedly yields a large profit to the reader. Its outstanding merits are the comparative length of the period covered, the scope and homogeneity of the data and the thoroughness of the analysis. The reader's profit is somewhat reduced by the fact that the main body of the investigation stops at 1928, thus excluding the interesting year 1929 and the depression years 1930-32; the period studied is therefore too prosperous to be typical.

A more intensive examination of the economic and accounting aspects of the problem of profits would have been helpful in the interpretation of the results. For instance, Epstein investigates thoroughly the question whether an overvaluation of intangible assets might have

impaired the accuracy of the calculated profit rates. But he fails to examine whether an undervaluation of intangibles does not account for the observed stability of high profit rates. This question is suggested by the fact that for many industries high profit rates go together with a large proportion of intangible assets.

The profit returned by Epstein's volume is slightly depressed by his generosity in exposition which unnecessarily extends the length of the book. Epstein makes it all too easy for the reader when he expounds with sedulous precision simple methodological details and digests tabular material in lengthy textual comments.

Paton's book is barely a quarter as long as Epstein's. Its factual basis, however, is correspondingly much narrower. Slightly over 700 companies are analyzed, and those only for 1927-29. The data were compiled by the American Institute of Accountants, which requested its members to furnish from their files reports for a representative number of their clients; steps were taken to assure non-disclosure of the identity of firms reported upon. It is gratifying that this attempt, perhaps the first of its kind, to submit audit reports to an economic analysis was so highly successful.

The 714 companies are for the most part small and medium size firms. (The average capital is about \$2,000,000.) Paton relates profits to total net assets as well as to stockholders' equity. He investigates the relations between earning power and size, dividend policy and surplus accumulation. A thorough study is given to the influence on profit resulting from the use of preferred stock. Since in addition to figures on profit and sales Paton had at his disposal data on balance sheet items he was able to compute a series of important ratios—the liability ratio, the operating ratio, the working capital position, inventory turnover. Of particular interest is the material bearing on the relation between the profit rate and the proportion of intangible assets.

The average profit rate for 1927-29 in Paton's sample was 9.2 per cent on stockholders' equity, 8.4 per cent on total net assets. The year 1928 was the best of the three; in 1929 the rate was below that for 1927. Manufacturing was more profitable than trading. Companies with assets from \$50,000 to \$200,000 earned the highest profit rate; smaller and larger companies were less profitable.

The apparatus of Paton's study is simpler than that of Epstein's, which in its turn is limited to simple statistical techniques as compared with the methods used by R. T. Bowman. Also economic problems, upon which Epstein's work is oriented, are in Paton's book

relegated to a secondary place. Paton does not, of course, disregard them, as is evident from his concluding observations. But he is more concerned with the possibility of deriving from a collection of audit reports reliable measures of the interrelations of assets, liabilities, sales and costs as well as of the relations of these items to profit and capital. He hopes in this way to uncover the fundamental factors determining the formation of profits, to serve as a guide if a larger sample should be available. For a study of the relation between profit and other economic quantities, however, an investigation based even on a small sample is possible; it would be significant first of all as a test of what can be expected. We leave Paton's book with some regret that the expert knowledge of its author has not been directed also to this type of analysis.

Fritz Lehmann

STUDENSKI, PAUL. *Chapters in Public Finance*. [Reprinted from Volume 2 of *Economic Principles and Problems* (Revised Edition, 1934) by Walter E. Spahr and others.] New York: Farrar & Rinehart. 177 pp. \$1.

Studenski's book deals in four chapters with, respectively, "the nature and mechanism of the public economy," public expenditures, public revenue and public credit. Since the first chapter includes problems of the budget he thus treats briefly every field of public finance.

The book is obviously intended to be an introduction to the study of public finance, and it is very useful for this purpose. Some questions, of course, had to be omitted or only touched upon because of lack of space. The author is right in giving greater emphasis to economic aspects, while technical details, the sociological point of view and legal questions are left in the background. But since the reference is almost exclusively to American conditions the reader may sometimes be led to erroneous conclusions. Also, only Anglo-American literature is quoted, and the author seems scarcely to have used the French, German and Italian studies.

An exhaustive discussion of Studenski's theories is not possible here, and I shall confine myself to three critical points. First, Studenski offers "canons" for a tax and credit policy which, although they are entirely "rational," lack theoretical substantiation. This lack may be inexpedient in view of the didactic purpose of the book. Second, the concepts "social utility" and "social advantage" play a crucial part in

the discussion of the mechanism of the public economy, the effects of taxation, the credit policy, etc. These concepts and the formulae using them lack the necessary precision. They are ambiguous and almost unfeasible for practical use. The average reader, especially the novice in this field, will not be aware of the vagueness of these basic concepts and will believe that the formulae provide him with rigid and practical principles. Third, the statistics, in some cases consisting of international comparisons, are incorporated in the text, and although such illustrative statistics are of course very useful for an introduction, they are presented in a very concentrated form, with no mention of the methodological difficulties which the reader of such comparisons must encounter.

These and similar objections which might be mentioned do not, however, prevent one from recommending Studenski's clear and readable book as a useful introduction to the study of public finance.

Fritz Neumark

HARDY, CHARLES O., assisted by KUCZYNSKI, ROBERT R. *The Housing Program of the City of Vienna*. [The Institute of Economics Publication No. 57.] Washington: Brookings Institution. 1934. 143 pp. \$2.

Low cost housing seems at last to have become a practical problem in the United States. It is both wise and natural for economists in this country to look to Europe for guidance in this particular field, for Europe has gone through an experience of planned rehousing which is unparalleled in history. Some ten million new homes, representing a value of at least twenty-five billion dollars, have been constructed in Europe since the war.

In discussing European housing reforms Austria, and especially Vienna, is constantly referred to. This is natural enough, as the goal there was certainly a radical one. It was the ambition of Vienna's socialist government to assure the unprivileged classes satisfactory though modest shelter at nominal rents. This program was widely discussed and received not only the acclaim of enthusiastic reformers but also vehement attacks from capitalist circles. A frequent reproach was that both the planning of the developments and the selection of the tenants were guided by narrow party tactics. Such allegations make an impartial study by a scientific agency highly desirable. As a whole the Vienna Social Democrats may be well satisfied with the results of Mr. Hardy's investigation. No evidence could be found for partiality

in the administration, and the actual achievement observed is undoubtedly imposing. A poor community with a very low prewar housing standard, deprived by the results of the peace conference of practically all its former resources, succeeded in adding by 1933 nearly 60,000 new dwellings, available to those who were most in need, to its 450,000 dwellings already in use. It is not, however, the quantity of the achievement which makes Vienna's efforts worth studying. As a matter of fact, in a good many other countries the increase of new homes surpassed the Austrian figures, both relatively and absolutely. Germany, for example, built in the same period three and a half million new dwellings, thus increasing its prewar facilities of thirteen and a half million by 26 per cent, as compared with a 13 per cent increase in Vienna. The unique features of Vienna's achievement were its systematic basis, its realistic attitude, its extraordinarily cheap rents and its sound financing. Nowhere in the world did the poorer classes enjoy a more radical change for the better in housing facilities without endangering their individual budgets and nowhere was a similar result achieved without entangling the country in heavy debts. In very few other places did planning follow such clear lines, Amsterdam and perhaps Frankfurt being among the few cities surpassing Vienna in that respect. This success was possible only by a concurrence of these factors: an ingenious financial leadership (Breitner), which was impervious to any extraneous influence; a safe socialist majority not to be found in any other country except Russia; and, not least in importance, an inflation which had wiped out the indebtedness on real estate.

Admirable as this unique undertaking certainly is, does it recommend an automatic imitation in other countries, especially in the United States? Hardy scarcely touches this problem, and it does not, perhaps, lie strictly within the scope of his study. I feel very strongly that there are even fewer points in the Austrian development than in the procedure of other European cities that can be followed in this country. In the first place, there are important differences in the financial situation: as long as the currency is not ruined by inflation, thus freeing the house owner from his old debts and enabling the authorities to put heavy taxes on the virtually debt-free property, the financing methods of Vienna can scarcely be transplanted to this country. Furthermore, it would be little short of suicide for any party in power to deprive millions of house owners of their tenants. In the face of these difficulties it is scarcely necessary to mention the further question as to whether public housing could be a success in this country,

with its manifold and sometimes not altogether altruistic political customs. There is one point in Vienna's housing program, however, which any American effort should try to follow. The Austrian reformers evaded utopianism by being thoroughly realistic. They knew that too idealistic an attitude would send rents beyond the reach of the masses. For America to follow a similar realism would not mean to lower its standards to the level of Vienna, where it was necessary, for example, to build five story dwellings without elevators and without individual baths. I suggest only an application of those realistic principles *mutatis mutandis*. It may be mentioned incidentally that those responsible for housing in Vienna proved very wise in their acceptance of what seemed another restriction on idealism. They deliberately refused to demolish old buildings, no matter how poor they were, realizing that poor shelter in a time of housing shortage is better than none. I am afraid that America, with its premature interest in slum clearance, does not yet see the wisdom of this policy. Slum clearance is only the second step in rehousing a country.

ERNST KAHN

CROCE, BENEDETTO. *History of Europe in the Nineteenth Century*. New York: Harcourt, Brace. 1933. 375 pp. \$3.50.

It was Karl Vossler who praised Croce's book as one of the most illustrious phenomena of the history of the European spirit appearing in the last few years. And indeed it deserves this high appraisal, at least in so far as it has, perhaps for the last time, represented that traditional system of values waning today—above all the value of liberty—which has created what may properly be called the spiritual Europe. In the emotional experience of seeing his world shattered, Croce yet affirms and defends it, and on this very fact rests the documentary significance of his book, whatever limitations there may be in an interpretation of the history of the nineteenth century from this starting point.

Croce, according to his basic philosophical conception, rooted in Hegel's philosophy, interprets the nineteenth century as the unfolding of the idea of liberty, which called for the creation of a new Europe after the collapse of the feudal foundations of the old. The struggle for the realization of this idea in the dialectic rhythm of the historical process, rise, triumph, downfall, forms the contents of this book. It is not a mere array of incoherent details or of bald facts, but a comprehensive review and thus a history of forces or ideas rather than of

events, which are conceived of as nothing but expressions of these forces and ideas.

The first and fundamental chapters deal with the various conflicting ideas, above all with the idea of liberty itself, analyzed not in an empiric but in a broad philosophic way. Liberty cannot be defined empirically. All its incarnations, as evidenced in institutions and similar embodiments, are only partial aspects and as such inadequate. The idea of liberty is an eternal becoming. Liberty is defined as spirit with the attributes of humanity and concrete personality. The first element in the definition is directed against the transcendental conception of liberty in Christianity, the other element is directed against the abstractions of the eighteenth century. In the nineteenth century this idea becomes a religion in so far as it forms the foundation of the whole life, not only shaping the life of the individual, but even dominating the social and political realm. This essential concept of freedom is contrasted with the other ideas of the century, which were partly reactionary, partly revolutionary—ideas which, though not a true expression of the time, either lagging behind or moving ahead of the epoch, nevertheless manifested actual strength in the historical process of the nineteenth century, in manifold combinations, but mainly in their association with "force." The reactionary ideas include Catholicism as well as legitimism. The idea of Catholicism, which originally furthered the liberty of the Occident, turned reactionary, according to Croce, with the dawn of the modern age, especially after the experience of the French Revolution. The legitimism of the absolutist monarchy, like reactionary Catholicism, is characterized as anti-liberal and anti-national, striving, after the Napoleonic adventure, to restore the old order of Europe which had collapsed as a result of the French Revolution. Democracy and communism are ranged by Croce under the head of revolutionary ideas, since both are fundamentally opposed to the idea of liberalism. The idea of democracy is revolutionary in so far as it implies thinking in terms of quantity, not quality. In more concrete language this means that in the relationship between the individual and the political entity it gives predominant weight to the latter. Croce treats the idea of communism as revolutionary not for the reason that it fights for economic reorganization—for Croce insists that the idea of liberty is not necessarily connected with a definite economic system, namely that of economic individualism—but for the reason that it adheres to the materialistic interpretation of man and history and is, therefore, incapable of recognizing the essence of spirit to which the idea of liberty is

by definition attached. Political romanticism, which is to some extent linked in various combinations with democracy and communism, Croce regards as a force ultimately hostile to liberalism. The general character of the ideas of political romanticism is lack of attitude, absence of spirituality and lack of universal outlook. The spiritual products of political romanticism are naturalism, socialism, skepticism, irrationalism, national activism and the worship of sheer force. The ideas of democracy and communism may, however, ally themselves with the idea of liberty and this is particularly true of the idea of democracy. Yet they are essentially opposed to the liberal idea and therefore Croce classifies them as religions opposed to the religion of liberty.

Roughly speaking, Croce makes a distinction between two great periods. The first one is characterized by the triumphal procession of the liberal idea, its unfolding in unbroken freshness; the second period, by the decay of the idea, though still exultant over its external victories. It is during the first period that the reactionary political obstructions are shattered and the liberal idea emerges victorious in the countries of western Europe, at the same time spreading to central Europe where its development is hampered, however, by the collapse of the Revolution of 1848.

To Croce the most superb achievement of the liberal idea in this epoch was the fulfilment of the Italian nation, a model of liberal national unification. "If it were possible in political history to speak of masterpieces as we do in dealing with works of art, the process of Italy's independence, liberty and unity would deserve to be called the masterpiece of the liberal-national movement of the nineteenth century; so admirably does it exhibit the combination of its various elements, respect for what is old and profound innovation, the wise prudence of the statesman and the impetus of the revolutionaries and volunteers; ardour and moderation; so flexible and coherent is the moral thread by which it developed and reached its goal."

The triumphal progress of the liberal idea was arrested in the second period by the cooperation of the revolutionary and reactionary forces which endangered, and in central Europe even completely suppressed, its further development. The forerunner of this anti-liberal tendency was the dictatorship of Napoleon III. But the essential counterblow was struck by Germany. The failure of the liberal idea in 1848 and the unbroken power of the reactionary forces precluded a liberal national unification, after the pattern of Italy, and committed to the hands of Bismarck the task of unification, with the result that neither unity nor liberty was established, but merely an organization

resting on power. "If the Italian Risorgimento was the masterpiece of the European liberal spirit, this rebirth of Germany was the masterpiece of political art in union with the military virtues: two masterpieces as different from one another in general appearance as a fine poem is from a powerful machine."

The consequences of this solution were fatal to Germany as well as to Europe. Spiritually, they made for the corruption of the liberal idea; politically, they suppressed, for more than fifty years, the hope of organizing Europe in a spirit of liberal-nationalism, in generosity and tolerance. The only basis of international order remaining was the old balance of power, for twenty years skilfully manipulated by Bismarck. After his fall, however, this last and feeble form of European order was annihilated by the rising imperialism, and the World War was the inevitable result.

During the World War it seemed for a moment as though the spirit of Cavour was to arise once more against that of Bismarck, and that liberals had every reason to be inspired with fresh hope for a new European order. But amidst inflamed passions the illiberal forces proved stronger than the liberal. The peace of Brest-Litovsk was avenged by the peace of Versailles, and instead of a new and better liberal order of Europe, the outcome was the complete disintegration of the European unity as an idea by the grouping of the nations as victors and vanquished.

The position of the liberal-national idea seems now more desperate than ever. But Croce does not despair. Communism and fascism, the new phenomena of the postwar period, however strong they may outwardly appear, do not impress him as truly effective historical forces. He regards them rather as dialectic antitheses out of which the liberal idea will be reborn. Croce is firmly convinced that the real problems of the Europe of today can be solved only by a purified liberalism and thus, he believes, the main tasks of the liberal idea are still ahead, i.e. the political molding of Europe in a genuine peace and the shaping of a new social framework by solving the economic-technical problems through a liberal minded socialism, sprung from the true spirit of liberty.

Croce's methodological position, equally as remote from spiritual determinism as from historical materialism, is that of Hegel's philosophy of the spirit, extended in the direction of realism. The advantages of such a method are obvious. They make it possible to comprehend the historical process as a non-mechanical unity, thus admitting, unlike determinism and naturalism, an adequate approach to the his-

torical material. On the other hand, this method suffers from a number of disadvantages, the most serious of which seems to be the tendency to generalize on a medium level. Within this philosophical realm the real importance in history of certain forces will of necessity be overlooked. Thus Croce overlooks the specifically spiritual, more concretely the religious forces. It is typical of Croce that though including Catholicism¹ in the conjuncture of illiberal forces, he entirely neglects the particular importance of the Christian creed for the creation, formation and development of the free personality. Again, Croce takes no account of the importance of the material factors which, it is true, must not be considered positive, determinative factors of the historical process, as historical materialism assumes, but which nevertheless as retarding factors play a decisive part in the realization of spirit, or more concretely, in the realization of the idea of liberty. Disregard of the actual significance of these factors is one of the few serious shortcomings of this book. A consideration of these factors and their interplay would have prepared the ground for a more adequate comprehension of the inner dialectic process of the liberal idea and of the political and social limitations upon its realization. At the same time a recognition of these factors would have made possible more accurate formulations, particularly with respect to the conceptions of liberty and liberalism. It is one of Croce's great merits to have broken down the barriers of fixed categories by grasping the problem in philosophical terms. On the other hand, his method has led to a certain weakness in the formulation of conceptions. Therefore, I believe, it will be one of the immediate tasks of research, proceeding from the basis laid by Croce, to arrive at more precise formulations.

CARL MAYER

LASSWELL, HAROLD D. *World Politics and Personal Insecurity*. New York: Whittlesey House, McGraw-Hill. 1935. 307 pp. \$3.

This book centers around the difficulties which civilization is facing today. Special attention is paid to the symbolic aspects of politics and the unbalanced nature of modern man with his unsatisfied demands for security, equality and supremacy, and his dangerous expectation of violence. These analyses are completed by considerations of some

¹ It may be merely hinted that even this evaluation of Catholicism is problematic. At any rate, it was a Catholic that issued one of the most fiery manifestoes of liberalism of the nineteenth century. I am referring to Montalembert's pamphlet, *Les intérêts catholiques au 19. siècle* (1854), which was banned by the Pope.

of the economic and social conditions under which symbols are promoted and accepted. Lasswell's unconventional mode of presenting ideas permits him to touch also upon subjects which are of only minor relevance for the central theme, such as the peculiarities of the crisis of adolescence in the small bourgeois family, the method of culture comparisons, the desirability of a political weather bureau.

The method Lasswell prefers is that of psychoanalysis. It is therefore the psychological side of the problem which he takes into account most carefully. Its sociological and political aspects are not dwelt upon at such length. They are largely dealt with under the hypothesis that the present is a transition from the "last proletarian revolution" (the Russian), which he calls the second bourgeois revolution, to the next one which will possibly occur in a situation characterized by a "skill struggle" of intellectual technicians instead of by class struggles. The combination of psychoanalytical method with certain devices of Marxism and with the modern European criticism of ideologies as it has been developed by Sorel and Pareto enables the author to give an intrepid analysis of his subject beyond the boundaries of any political philosophy. Much as the reader enjoys this performance of versatile intellectualism, based on so rich a knowledge of modern techniques of analysis, one objection obtrudes itself when the book is carefully re-read. The long tradition of European criticism of culture proves that the only guide to an understanding of civilization and of one's place within it is a firm adherence to certain values. The values differ, to be sure, from critic to critic, but they are indispensable, since every analysis of civilization involves valuations. This holds true not only for criticism developed from a theological point of view, like that of Kierkegaard, but also for Comte's great positivistic verdict on his time or for systems of thought like historical materialism which meant destruction to whole sets of values.

But it is neither as a Christian nor as a communist that Lasswell discusses the crisis of our civilization. His definition of the intellectual may be taken as an example of his characteristic caution toward any premature dogmatism. "The intellectuals," he says, "are distinguished from other specialists on symbols by their concentration upon symbols of conflicting values." This point of view is acceptable, however, only if it allows for loyalty and convictions, and it would be dangerous to infer from it that universal value destruction is an essential requirement of intellectual alertness. In other words, anyone who ventures upon analyzing a civilization must run the risk of paving the way for a new dogma, for in such endeavor no truth can be won without risk.

Thus every critic of culture must cope with the fact that the values which enable him to recognize phenomena like insecurity cannot be established by methods which are fit for destruction of values. Lasswell's definition of value, however, reveals the desolate irony of the latter method when it is used indiscriminately. "Value is the word we use to indicate that there are some impulses with which we associate our ego symbol at a given time." Thus by means of scientific detachment value is deprived of its obligatory claim and becomes subject to *irresponsible* neglect and *arbitrary* change.

In short, Lasswell fails to explain to his readers that secure value from which he diagnoses the insecurity of our present time. The term insecurity does not accidentally remain undefined in this book which abounds in suggestive definitions. For the political psychiatrist he "assumes the desirability" of enabling human activities to evolve at a minimum of human cost. Thus his own loyalties are admitted only in the form of an assumption, which is, however, no more than an empty concession to scientific method.

These remarks are not meant to minimize the significance of Lasswell's thoughtful analysis of insecurity in our present civilization. It is of greater importance to have challenging ideas on such a subject than to be satisfied with cheap verdicts.

HANS SPEIER

BRAILS福德, HENRY NOEL. *Property or Peace?* New York: Covici-Friede. 1934. 349 pp. \$3.

Here is a well written survey of the present political and economic crisis of the world. Its author is at once a democrat who with deep regret contemplates the "suicide" of democracy (p. 40), a pacifist who fought for Greek liberty in 1897 (p. 177), a socialist who does not hesitate to criticize the German Social Democratic party as well as his own Labour party, a traveler who has seen vast parts of the American, the British and the Russian empires. He makes good use of the experiences of an active life as political journalist, economist and traveler, but in spite of the utmost intellectual and moral candor, this radical socialist sees the world rather as a liberal.

The book begins with an analysis of democracy and its critics. There follows a lengthy discussion of the influence of property — i.e. the ruling capitalist class — over the political and social structure and over public opinion and the everyday life of the individual as reader of the press, listener to the radio, employee and consumer. Brailsford's

conclusion is, briefly, that even in countries still adhering to a democratic political system political equality is nullified and that "Property extracts from democracy results that curiously resemble a dictatorship of the ruling class" (p. 93). The second part of the book gives a survey of the economic situation, including an appraisal of Roosevelt's experiment of a planned capitalism which Brailsford calls the Liberal Cure. Its limits are to be found in the very structure of capitalism, which aims at unlimited profits. "A regulated capitalism is a contradiction in terms" (p. 125). The same reasoning applies to international relations, for "what Property is in the industrial realm . . . Sovereignty is in the international world" (p. 142). The failure of the League of Nations is rooted in its very conception. Its spiritual fathers, with Wilson at their head, were liberals who having "discarded *laissez faire* at home retained it in their international thinking" (p. 139). The well known relations between nineteenth century liberalism and nationalism are still vivid in the conception and activity of the League. This analysis can hardly be refuted but the author—who has been since 1907 a member of the ILP and is not guilty of the shallow pacifism of the believer in a prestabilized harmony—seems still too much taken in, even though negatively, by this liberal vision of the role of national sovereignty.

In describing the necessity for exporting capital and goods as the primary impetus to imperialism Brailsford strangely neglects the manifold international interlacings of the capitalist interests of the different nations. One has only to hear the words "oil" and "rubber" to see pass before one's eyes the whole deadly procession of an imperialism which cares nothing for national interest or state limits as such, which knows and seeks nothing but profits and which, though its commerce may "follow the flag," has no national color or conscience.

According to Brailsford only a radical change in the international structure can save the world from the militarist aggressions of national property. For "Property which is fatal to order in our industrial system" is "equally inimical to peace" (p. 195). But it may well be that the author is too optimistic. Just as earlier socialists believing in pure legality and in a more or less mechanical "progress" were too slow in their activity, their "will to power," this pessimist who shows us the deficiencies of nationalism and imperialism, of property and sovereignty, may still be not sufficiently a pessimist when he considers the prospects of internationalism.

Following mainly G. D. H. Cole's sketch, Brailsford in "Problems of a Socialist Government" (p. 285) shows the step by step develop-

ment of the international society which will have to be started as soon as a labor government comes to power.¹ Political activity necessitates risk, and the only alternatives today for an anticapitalist seem either to surrender to the tyranny of fascism or to accept the responsibility for the construction of the new society. There is no third choice for the socialist. But does Brailsford really believe that "the capitalists of all countries" will meekly accept the outlawing of profit and property in that great part of the world which is the British empire? After all, the world has seen the wars of the Coalition after 1789, and also the White invasions of Russia. Brailsford may denounce the "myth of Sovereignty" as the shield of capitalist interests, but is he not himself in a sense a victim of this myth? May not the owning classes themselves become strong and valiant enough to discard that shield if it no longer seems primarily necessary for their real interests?

EVA GARDENER

¹ It may be noted that the expression "nationalization," which the English used in the years after the war, has entirely disappeared in favor of "socialization"—another indication of the changed attitude toward socialism and the class issue.

The Journal of Land & Public Utility Economics

a quarterly founded in 1925 by Richard T. Ely
and published by Northwestern University

Among the articles to appear in the November, 1935, issue are

THE RELATION OF FEDERAL OWNERSHIP TO STATE FINANCES
WITH PARTICULAR REFERENCE TO RAILWAYS.....George M. Keith
URBAN REAL ESTATE MORTGAGE DELINQUENCY.....Roy J. Burroughs
THE VOLUME OF PUBLIC UTILITY FINANCING,
1919-1935E. D. Ostrander
AIR EXPRESS SERVICE IN THE UNITED STATES.....W. L. McMillen
THE FRENCH ATTACK ON THE HOUSING PROBLEM.....Wells Bennett
PUBLIC UTILITY LEGISLATION OF 1935.....D. L. Marlett

NOTES on current developments in land economics and public utilities
and REVIEWS of recent books

Published in February, May, August and November

Subscription—\$5.00 per year

Single copies—\$1.25

337 East Chicago Avenue, Chicago, Illinois

BOOKS RECEIVED

- BEARD, CHARLES A. *An Economic Interpretation of the Constitution of the United States*. [With new introduction.] New York: Macmillan. 1935. 330 pp. \$2.
- BECKER, CARL L. *Everyman His Own Historian. Essays on History and Politics*. New York: Crofts. 1935. 325 pp. \$2.50.
- BERKENKOPF, PAUL. *Die Auflockerung der Industriestandorte und der Anteil der Verkehrspolitik*. [Verkehrswissenschaftliche Forschungen aus dem Verkehrs-Seminar an der Westf. Wilhelms-Universität zu Münster, no. 4.] Münster: Wirtschafts- und Sozialwissenschaftlicher Verlag. 1935. 30 pp. 0.90 RM.
- BERNHEIM, ALFRED L., and SCHNEIDER, MARGARET GRANT, eds. *The Security Markets*. [Findings and Recommendations of a Special Staff of the Twentieth Century Fund.] New York: Twentieth Century Fund. 1935. 865 pp. \$5.
- BERNHEIM, ALFRED L., and VAN DOREN, DOROTHY, eds. *Labor and the Government. An Investigation of the Role of the Government in Labor Relations*. New York: McGraw-Hill for Twentieth Century Fund, Inc. 1935. 413 pp. \$2.75.
- BICHOWSKY, F. RUSSELL. *Is the Navy Ready?* New York: Vanguard. 1935. 323 pp. \$3.
- BIDWELL, PERCY W., ed. *American Primers: Youth in the Depression* by Kingsley Davis; *Money* by Marc Rose and R. L. Horne; *The Farm Business* by Roman L. Horne; *Friends or Enemies?* by Julius W. Pratt; *Crime* by Nathaniel Cantor; *Strikes* by Joseph J. Senturia; *Business and Government* by J. C. Crighton and J. J. Senturia; *Jobs or the Dole?* by Neal B. DeNood; *You and Machines* by William F. Ogburn. Chicago: University of Chicago Press. 1935. 25 cents each.
- BRAEUER, WALTER. *Kartell und Konjunktur. Der Meinungsstreit in fünf Jahrzehnten*. Berlin: Heymanns. 1934. 76 pp.
- CARLETON, R. L. *Local Government and Administration in Louisiana*. [A Diamond Jubilee Publication, study no. 17.] Baton Rouge: Louisiana State University Press. 1935. 333 pp. \$2.
- COLE, G. D. H. *Economic Planning*. New York: Knopf. 1935. 384 pp. \$3.
- CONACHER, H. M. *The Agricultural Marketing Acts*. Edinburgh: Green. 1935. 200 pp. 10s.
- CONVERSE, PAUL D. *The Elements of Marketing*. [Revised edition.] New York: Prentice-Hall. 1935. 985 pp. \$5.
- CREAMER, DANIEL B. *Is Industry Decentralizing? A Statistical Analysis of Locational Changes in Manufacturing Employment, 1899-1933*. [With a Preface by Carter Goodrich.] Philadelphia: University of Pennsylvania Press. 1935. 105 pp. \$1.
- DAVIS, HAROLD T., and NELSON, W. F. C. *Elements of Statistics. With Applications to Economic Data*. Bloomington: Principia Press. 1935. 424 pp.
- DEWEY, JOHN. *Liberalism and Social Action*. New York: Putnam. 1935. 93 pp. \$1.50.
- DOUGLAS, PAUL H. *Controlling Depressions*. [Social Action Series, ed. by Alvin Johnson.] New York: Norton. 1935. 286 pp. \$3.
- ECKHARDT, KARL AUGUST. *Das Studium der Rechtswissenschaft*. [Der deutsche Staat der Gegenwart, ed. by Carl Schmitt, no. 11.] Hamburg: Hanseatische Verlagsanstalt. 1935. 32 pp. 1 RM.
- ENGLÄNDER, OSKAR, and SCHRANIL, RUDOLF. *Finanzwissenschaft und Tschechoslowakisches Fi-*

- nanzrecht. Brunn: Rohrer. 1935. 503 pp. Paper, 15 RM.; cloth, 17 RM.
- FISHER, IRVING. *100% Money*. New York: Adelphi. 1935. 212 pp. \$2.50.
- FORD, GUY STANTON, ed. *Dictatorship in the Modern World*. Minneapolis: University of Minnesota Press. 1935. 179 pp. \$2.50.
- FORSTMANN, ALBRECHT. *Der Kampf um den internationalen Handel*. Berlin: Haude & Spensersche Buchhandlung Max Paschke. 1935. 415 pp. 14 RM.
- FOSTER, M. B. *The Political Philosophies of Plato and Hegel*. New York: Oxford University Press. 1935. 207 pp. \$3.
- GALLOWAY, GEORGE B., and associates. *Industrial Planning Under Codes*. New York: Harper. 1935. 428 pp. \$4.
- GAYER, ARTHUR D. *Public Works in Prosperity and Depression*. [Prepared for the National Planning Board, Federal Emergency Administration of Public Works.] New York: National Bureau of Economic Research. 1935. 484 pp. \$3.
- GILFILLAN, S. C. *The Sociology of Invention*. An essay in the social causes of technic invention and some of its social results; especially as demonstrated in the history of the ship. Chicago: Follett. 1935. 205 pp. \$2.
- GOODRICH, CARTER; ALLIN, BUSHROD W.; and HAYES, MARION. *Migration and Planes of Living, 1920-1934*. Philadelphia: University of Pennsylvania Press. 1935. 111 pp. \$1.
- HANKINS, FRANK H. *An Introduction to the Study of Society*. [Revised ed.] New York: Macmillan. 1935. 808 pp. \$4.
- HERBERT, GEORGE. *Can Land Settlement Solve Unemployment?* [With Foreword by The Rt. Hon. David Lloyd George.] London: Allen & Unwin. 1935. 129 pp. 3s.6d.
- HILLTON, JOHN; MALLON, J. J.; MAVOR, SAM; ROUNTREE, B. SEEBOHM; SALTER, Sir ARTHUR; STUART, FRANK D., eds. assisted by HEIGHAM, VIDA M. S. *Are Trade Unions Obstructive? An Impartial Inquiry*. London: Gollancz. 1935. 349 pp. 5s.
- HILTPOLD, GUSTAV F. *Erzeugung und Verwendung motorischer Kraft*. [Zürcher Volkswirtschaftliche Forschungen edited by Prof. Dr. M. Saitsew, vol. 22.] Zürich: Girsberger. 1934. 261 pp. 15 fr.
- Historic Opinions of the United States Supreme Court*. [With preface and introductory notes by Ambrose Doskow.] New York: Vanguard. 1935. 537 pp. \$4.50.
- HUNTLEY, KATE. *Financial Trends in Organized Social Work in New York City*. New York: Columbia University Press for The Welfare Council of New York City. 1935. 330 pp. \$3.75.
- International Problems of Agriculture*. [Discussions at the 12th meeting of the general assembly of the International Institute of Agriculture, October 22-27, 1934.] Rome: International Institute of Agriculture. 1935. 80 pp.
- ISRAELI, NATHAN. *Outlook upon the Future of British Unemployed, Mental Patients, and Others*. New York: Author. 1935. 30 pp. 50 cents.
- IVERSEN, CARL. *Aspects of the Theory of International Capital Movements*. New York: Oxford University Press. 1935. 536 pp. \$5.
- KENNAWAY, M. J. *Some Agricultural Enterprises in Malaya*. Kuala Lumpur. 1934. 132 pp.
- KERSCHAGL, RICHARD. *Finanzwissenschaft. Abriss der Steuerlehre*. Vienna: Oesterreichischer Wirtschaftsverlag. 1935. 184 pp.
- KING, CLYDE L. *Public Finance*. New York: Macmillan. 1935. 602 pp. \$3.75.
- LIBBY, MARGARET SHERWOOD. *The Attitude of Voltaire to Magic*

- and the Sciences. [Studies in History, Economics and Public Law edited by the Faculty of Political Science of Columbia University, no. 408.] New York: Columbia University Press. 1935. 299 pp. \$3.75.
- LOWE, BOUTELLE ELLSWORTH. *The International Protection of Labor. International Labor Organization, History and Law.* [New edition, revised and enlarged.] New York: Macmillan. 1935. 594 pp. \$3.50.
- MAXTON, JOHN F. *Proceedings of the Third International Conference of Agricultural Economists.* [Held at Bad Eilsen, Germany, 1934.] New York: Oxford University Press. 1935. 498 pp. \$6.
- McCLEARY, G. F. *The Maternity and Child Welfare Movement.* London: King. 1935. 227 pp. 7s.6d.
- MENGARELLI, CARLO. *La Costituzione Nelle Aristocrazie Italiane.* [Pubblicazioni della Università Cattolica del Sacro Cuore, statistical series, vol. 8.] Milan: Società Editrice "Vita E Pensiero." 1935. 161 pp.
- MYERS, WILLIAM I. *Farm Credit Administration.* New York: American Institute of Banking. 1934. 478 pp. \$3.
- Neighbors in Need. Survey of 10,000 Relief Cases.* [Report no. 1 of the State of New Jersey Emergency Relief Administration.] Newark. 1935. 79 pp.
- POLITICUS. *Viscount Grey of Fallodon.* [2nd ed., 1st ed. 1934.] London: Methuen. 1935. 145 pp. 6s.
- Proceedings of the Forty-Eighth Annual Convention of the Association of Land-Grant Colleges and Universities,* held at Washington, D. C. Nov. 19-24, 1934. [Edited by Charles A. McCue for the Executive Committee of the Association. The Association, University of Kentucky, Lexington, Ky.] 1935. 305 pp.
- Report of the National Survey of Potential Product Capacity.* [Prepared under the sponsorship of the New York City Housing Authority and Works Division of the Emergency Relief Bureau, City of New York.] New York: City Housing Authority. 1935. 358 pp.
- RIKER, T. W. *A Short History of Modern Europe.* New York: Macmillan. 1935. 890 pp. \$3.50.
- ROBINSON, EDWARD STEVENS. *Law and the Lawyers.* New York: Macmillan. 1935. 348 pp. \$2.50.
- RUFENER, LOUIS A. *Money and Banking in the United States.* Cambridge: Houghton Mifflin. 1934. 788 pp. \$3.50.
- SCHULTZ, THEODORE W. *Vanishing Farm Markets and Our World Trade.* New York: World Peace Foundation. 1935. 41 pp. 50 cents.
- SEDGWICK, HENRY DWIGHT. *In Praise of Gentlemen.* Boston: Little, Brown. 1935. 195 pp. \$2.
- Social Security in the United States.* 1935. [A record of the 8th National Conference on Social Security, New York City, April 26 and 27, 1935, together with a census of social security in the United States.] New York: American Association for Social Security, Inc. 1935. 239 pp. \$1.
- SOMBART, WERNER. *Deutscher Sozialismus.* Charlottenburg: Buchholz & Weisswange. 1934. 347 pp. Paper, 4.80 RM.; cloth, 6.30 RM.
- WEBER, ALFRED. *Kulturgeschichte als Kultursoziologie.* Leyden: Sijthoff. 1935. 423 pp. Paper, 13 RM.; cloth, 15 RM.
- WOLFENDEN, HUGH H. *Unemployment Funds. A Survey and Proposal.* [A Study of Unemployment Insurance and Other Types of Funds for the Financial Assistance of the Unemployed.] Toronto: Macmillan. 1934. 229 pp. \$2.
- YOUNG, CHARLES N. *U. S. A. A Blueprint of Fair Competition.* [With an introduction by Harry W. Laidler.] Glens Falls: Author. 31 pp. 20 cents.

American Economic Association

THE American Economic Association has as its purpose the encouragement of economic research, especially the historical and statistical study of the actual conditions of industrial life, the issue of publications on economic subjects, and the encouragement of perfect freedom of economic discussion. The Association as such takes no partisan attitude, nor will it commit its members to any position on practical economic questions.

Membership entitles one to receive the *American Economic Review* and the proceedings of the annual meetings.

Annual Membership	\$5.00
Life Membership	\$200.00

Applications for membership should be sent to:

The Secretary,
American Economic Association,
NORTHWESTERN UNIVERSITY,
EVANSTON, ILLINOIS.

